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CODE OF CRIMINAL PROCEDURE OF THE RSFSR

- USSR -

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CODE OF CRIMINAL PROCEDURE OF THE RSFSR

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DECREE

of the

RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC

Concerning the Adoption of the Code of Criminal
Procedure RSFSR

The Supreme Soviet of the Russian Soviet Federative Socialist Republic decrees:

Article 1. That the Code of Criminal Procedure RSFSR be adopted and put into effect as of 1 January 1961.

Article 2. That the Presidium of the Supreme Soviet RSFSR be instructed to establish a procedure for putting into effect the Code of Criminal Procedure RSFSR and publish a list of those legislative acts of the RSFSR which will lose their legal force owing to the promulgation of the Code of Criminal Procedure RSFSR.

Chairmen of the Presidium,
Supreme Soviet RSFSR

N. ORGANOV

Secretary of the Presidium,
Supreme Soviet RSFSR

S. ORLOV

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SECTION ONE

GENERAL PRINCIPLES

Chapter One

Basic Principles

Article 1. Legislation on Criminal Proceedings.

The procedure for conducting criminal proceedings on the territory of the RSFSR is governed by the Basic Principles for Criminal Proceedings of the USSR and the Union Republics and other laws of the USSR promulgated in accordance therewith, and by the Code of Criminal Procedure RSFSR.

The conduct of criminal proceedings is governed by the law of criminal procedure in force, respectively, at the time of the police inquiry, the preliminary investigation, or the judicial examination of the case.

Irrespective of the place where the crime was committed, criminal proceedings on the territory of the RSFSR are in all cases conducted in conformity with the Code of Criminal Procedure RSFSR.

The procedure for legal proceedings established by the criminal procedural laws is uniform and binding for all criminal cases and for all courts, organs of the prosecutor's office, of preliminary investigation, and of police inquiry.

Article 2. The Purposes of Criminal Proceedings.

The purposes of Soviet criminal proceedings are the rapid and complete discovery of crimes, the conviction of guilty parties, and ensuring the correct application of the law so that every criminal

will receive a just punishment and not one innocent person will be held criminally responsible and convicted.

Criminal proceedings must facilitate the strengthening of socialist legality, the prevention and eradication of crimes, and the education of the citizenry in a spirit of unswerving obedience to Soviet laws and respect for the regulations of socialist communal life.

Article 3. The obligation for initiating criminal proceedings and discovering the crime.

The court, the prosecutor, the investigator, and the organ of police inquiry have the responsibility, within their jurisdiction, for initiating criminal proceedings in every case of the discovery of indicia of a crime, and for taking all legally prescribed measures to ascertain the events of the crime and the persons guilty of its commission, and to punish them.

Article 4. The inadmissibility of bringing charges otherwise than in accordance with the principles and procedure established by law.

No person can be prosecuted except in accordance with the principles and procedure established by law.

Article 5. Circumstances ruling out criminal proceedings.

Criminal proceedings cannot be instigated or, if instigated, must be terminated, in the following cases:

- 1) Absence of the events of the crime;
- 2) Absence, in the act, of the elements of a crime;
- 3) Expiration of the period of limitation;
- 4) As the result of an act of amnesty, provided it rules out the application of punishment for the act committed, and also in the form of the amnestying of individual persons;
- 5) With respect to persons who, at the moment the socially dangerous act was committed, had not attained that age at which, according to law, they can be held criminally liable;
- 6) Agreement between the injured party and the accused with respect to cases which have been instigated exclusively upon the complaint of injured parties, except for those cases stipulated in the second and third parts of Article 27 of the present Code;
- 7) Absence of a complaint by the injured party, if the proceedings can be instigated only upon his complaint, except for the cases stipulated in the third part of Article 27 of the present Code, when the prosecutor is authorized to initiate proceedings in the absence of a complaint by the injured party;

8) With respect to a person who has died, except for those cases where it is necessary to hold proceedings in order to rehabilitate the person who has died, or to reopen the case with respect to other persons on the basis of newly discovered evidence;

9) With respect to a person concerning whom, under the same charges, a court sentence, or decision, or ruling to terminate proceedings has already become final;

10) With respect to a person concerning whom an unabrogated ruling of the organ of police inquiry, the investigator, or the prosecutor for termination of proceedings under the same charges, except for those cases specified in articles 255 and 256 of the present Code.

If the circumstances specified in items 1, 2, 3, and 4 of the present article are discovered at the stage of judicial examination, the court will complete its hearing of the case and issue a judgment of "not guilty" in the cases specified in items 1 and 2, or a judgment of "guilty" but with suspension of sentence in the cases specified in items 3 and 4.

Termination of proceedings for the reasons enumerated in items 3 and 4 of the present article shall not be allowed if the accused files a protest. In such case, proceedings shall be continued in the usual manner.

Article 6. Termination of criminal proceedings as a result of a change in the circumstances

The court, the prosecutor, and also the investigator and the organ of police inquiry by agreement with the prosecutor, are authorized to terminate criminal proceedings if it is found that, prior to the conduct of the police inquiry, the preliminary investigation, or the trial of the case in court, as a result of a change in the circumstances, the act committed by the accused had lost its socially dangerous character, or if the person has ceased to be socially dangerous.

Article 7. Termination of criminal proceedings because of transfer to a comrades' court

The court, the prosecutor, and also the investigator and the organ of police inquiry by agreement with the prosecutor, may, for the reasons enumerated in Article 51 of the Criminal Code RSFSR, terminate criminal proceedings on the case and transfer it for hearing by a comrades' court.

Prior to the transfer of a case for hearing by a comrades'

court, notice of termination is given to the accused and the injured party, who have five days in which they may appeal the decision of the court or the ruling of the prosecutor or organ of inquiry, to the court of higher instance or the prosecutor of higher instance, as appropriate.

Article 8. Termination of criminal proceedings because of transfer to a commission on minors.

The court, the prosecutor, and also the investigator by agreement with the prosecutor, may terminate criminal proceedings against a person under the age of eighteen years who has committed a crime not involving great social danger and transfer the case for hearing by a commission on minors, provided the circumstances of the case and the information about the character of the criminal indicate that his correction is possible without the employment of criminal punishment.

Prior to transfer of the case for hearing by a commission on minors, notice of termination is given to the accused and his legal representative and also to the injured party, who have five days in which they may appeal the decision of the court or the ruling of the investigator or prosecutor to the court of higher instance or the prosecutor of higher instance, as appropriate.

Article 9. Termination of criminal proceedings with release of the accused on warranty.

The court, the prosecutor, and also the investigator and the organ of police inquiry may, for the reasons specified in Article 52 of the Criminal Code RSFSR, terminate criminal proceedings and release on surety, to a petitioning organization or collective of workers, for reeducation and correction, the person who has committed the crime.

Release on warranty and dropping proceedings for that reason are not permitted with respect to persons who have previously been convicted of a premeditated crime, or who have already been released on warranty.

If the person with respect to whom the criminal proceedings have been instigated considers himself innocent, or for some other reason insists that the case be heard in court, termination of proceedings and release on warranty are not allowed.

Notice of termination of proceedings is given to the injured

party, who has five days in which he may appeal the decision of the court or the ruling of the prosecutor, investigator, or organ of police inquiry to the court of higher instance or the prosecutor of higher instance, as appropriate.

If after one year the person released on warranty has not justified the trust of the collective, has violated his promise to correct himself, and has failed to subordinate himself to the norms of socialist communal life or has abandoned his work with a view to evading social action, the social organization or collective of workers which provided warranty for him will take a decision to withdraw the warranty and will communicate this decision to the court or prosecutor for consideration of the question as to the criminal liability of the accused. In this case the criminal case may be re-opened by decision of an executive session of the court or by a ruling of the prosecutor.

Article 10. Transmittal of the record, without instigating criminal proceedings, for purposes of taking measures of social action.

Where a person commits a crime which is not serious or does not involve great social danger, and when the fact of the crime is obvious and the person who has committed it may be corrected by measures of social action, the court, the prosecutor, and also the investigator and the organ of police inquiry by agreement with the prosecutor may, without initiating criminal proceedings, transmit the record for examination by a comrades' court or commission on minors, or release the accused on warranty to a collective of workers or a social organization for reeducation and correction.

Article 11. Inviolability of the person.

No person can be arrested except by ruling of the court or with the sanction of the prosecutor.

The prosecutor must immediately release any person who has been illegally deprived of his freedom or kept under guard for a period longer than that prescribed by law or by a court sentence.

Article 12. Inviolability of the home and privacy of correspondence.

The inviolability of the homes of citizens, and privacy of correspondence, are protected by law.

Search of a citizen's home, impounding of correspondence, and

its seizure at postal and telegraphic institutions may be effected only in accordance with the principles and procedure fixed by law.

Article 13. The administration of justice by the court alone.

The administration of justice in criminal cases is effected only by the court. No person may be declared guilty of a crime and subjected to criminal punishment otherwise than by sentence of a court.

Article 14. The administration of justice on the basis of equality of citizens before the law.

Justice in criminal cases is administered on the basis of the equality before the law and the court of all citizens, irrespective of their social, property, or official position, their nationality, or their religious affiliation.

Article 15. The participation of people's assessors and the principle of the collegium in hearing cases.

In all courts, criminal cases are heard by a judge and people's assessors elected in conformity with legal procedure.

In all courts of first instance, criminal cases are heard by a bench consisting of a judge and two people's assessors.

People's assessors have equal rights with the presiding judge in the court sitting in deciding all questions arising during the trial, and in handing down the sentence.

At the appellate level cases are heard by a bench consisting of three members of the court, and at the level of judicial control by a bench consisting of no less than three members of the court.

Article 16. The independence of the judges and their subordination to the law alone.

In the administration of justice in criminal cases the judges and people's assessors are independent and subject to the law alone.

Judges and people's assessors decide criminal cases on the basis of the law and in conformity with socialist legal philosophy under conditions excluding any outside influence upon them.

Article 17. The language in which the proceedings are conducted.

The proceedings are conducted in the Russian language, except that in autonomous republics, autonomous oblasts, or national okrugs they are conducted in the language of the autonomous republic, autonomous oblast, or national okrug, or in the language of the majority of the population, as appropriate.

Persons participating in the case who do not speak the language in which the proceedings are being conducted are entitled to make statements, depose evidence, address the court, and submit petitions in their own language, and to avail themselves of the services of an interpreter in accordance with the procedure fixed by law.

In conformity with the procedure established by the present Code, the accused is provided with a translation, into his own language or another language which he speaks, of documents relating to the investigation and court proceedings.

Article 18. The public nature of court hearings.

Hearings in all courts are open, except for those cases when this runs counter to the interests of protecting state secrecy.

Also, closed hearings are permitted in accordance with a reasoned decision of the court with respect to cases involving crimes committed by minors, cases involving sex crimes, and other cases, with a view to preventing the publicizing of information concerning intimate aspects of the lives of parties to the litigation.

In all cases the sentence of the court is made public.

Article 19. Assuring the right of defense for the accused.

The accused is entitled to defense.

The court, the prosecutor, the investigator, and the person making the police inquiry must provide the accused with the possibility of defending himself by legally prescribed means and methods against the charges brought against him, and must assure the protection of his personal and property rights.

Article 20. The thorough, complete, and objective study of the circumstances of the case.

The court, the prosecutor, the investigator, and the person

conducting the police inquiry must take all legally prescribed steps for a thorough, complete, and objective study of the circumstances of the case, and must investigate not only those circumstances tending to incriminate the accused but also those tending to exculpate him, and not only those tending to aggravate his guilt but also those tending to mitigate it.

The court, the prosecutor, the investigator, and the person conducting the police inquiry are not authorized to shift the burden of proof to the accused.

It is forbidden to obtain depositions from the accused by means of force, threats, or other illegal measures.

Article 21. Ascertaining the causes and conditions contributing to the commission of the crime.

In conducting the police inquiry, preliminary investigation, and court hearing of a criminal case the organs of police inquiry, the investigator, the prosecutor, and the court must ascertain the causes and conditions contributing to the commission of the crime and take steps to eliminate them.

Article 22. The right to appeal against the actions and decisions of the court, the prosecutor, the investigator, and the person conducting the police inquiry.

Interested citizens, institutions, enterprises, and organizations may appeal against the actions and decisions of the court, the prosecutor, the investigator, or the person conducting the police inquiry, in accordance with the procedure established by the present Code.

Article 23. Disqualification of the judge, the prosecutor, and other participants in the proceedings.

The professional judge, the people's judge, the prosecutor, the investigator, the person conducting the police inquiry, the secretary of the court session, the expert witness, and the interpreter **cannot** take part in criminal proceedings and must be disqualified if they have any personal interest in the case, directly or indirectly.

Article 24. Control of court activity by higher courts.

Pursuant to Article 19 of the Basic Principles for Criminal Proceedings of the USSR and the Union Republics, control over the

court activity of judicial organs of the USSR functioning on the territory of the RSFSR, and also judicial organs of the RSFSR within limits established by law, is exercised by the Supreme Court USSR.

The Supreme Court RSFSR exercises control over the court activity of all judicial organs of the RSFSR, and the supreme courts of the autonomous republics exercise control over the court activity of the courts of the autonomous republic in question.

Kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs exercise control over the court activity of rayon (municipal) people's courts in the particular kray, oblast, city, or okrug in question.

Article 25. Prosecutor control in criminal proceedings.

Pursuant to Article 20 of the Basic Principles for Criminal Proceedings of the USSR and the Union Republics:

Control over the accurate execution of the laws of the USSR, the RSFSR, and the autonomous republics in criminal proceedings is exercised by the General Prosecutor USSR, both directly and through the Prosecutor RSFSR and other prosecutors subordinated to him.

The prosecutor is responsible, at all stages of criminal proceedings, for promptly taking legally prescribed steps to eliminate any and all violations of the law irrespective of the source of such violations.

The prosecutor exercises his plenary powers in criminal proceedings independently of any organs or officials, subordinating himself only to the law and guiding himself by the instructions of the General Prosecutor USSR.

Rulings handed down by the prosecutor in conformity with the law are binding upon all institutions, enterprises, organizations, officials, and citizens.

Article 26. Combining and dividing criminal cases.

The only cases which can be combined into a single proceeding are those where several persons are charged with complicity in the commission of one or several crimes, or where one person is charged with committing several crimes, or likewise with the concealment or misprision of those same crimes, if not previously promised.

The division of a case is permitted only in circumstances dictated by necessity, provided this does not reflect on the thoroughness, completeness, and objectivity of the investigation and disposition of the case.

Cases are combined or divided by virtue of a ruling made by the person conducting the police inquiry, by the investigator, by the prosecutor, or by decision or ruling of the court.

Article 27. Criminal proceedings initiated upon complaint by the injured party.

Proceedings involving the crimes enumerated in Articles 112, 130 (first part), and 131 of the Criminal Code RSFSR are initiated only upon complaint by the injured party, and are to be terminated in the event of the latter's reconciliation with the accused. Reconciliation is permitted only up until such time as the court retires to chambers for formulation of the sentence.

Proceedings involving the crimes enumerated in Articles 117 (first part) and 141 of the Criminal Code RSFSR are initiated only upon complaint by the injured party, but they are not subject to termination after reconciliation between the plaintiff and the accused. In cases of this kind the proceedings are conducted in conformity with the general procedure.

In exceptional cases, if a case involving one of the crimes enumerated in Articles 112, 130 (first part), 131, or 141 of the Criminal Code RSFSR is of particular public significance, or if the injured party is not in a state to defend his rights and legal interests owing to a condition of helplessness or dependence upon the accused, or for other reasons, the prosecutor is authorized to instigate proceedings even in the absence of a complaint by the injured party. The case instigated by the prosecutor is sent for police inquiry or preliminary investigation, and upon completion of investigation is heard by the court in conformity with general procedure. A case of this kind cannot be terminated by reason of reconciliation between the injured party and the accused.

The prosecutor is authorized to intervene at any time in proceedings instigated by a judge upon complaint by the injured party and involving a crime or crimes enumerated in Articles 112, 130 (first part), and 131 of the Criminal Code RSFSR, and to support the charge, provided this is required to safeguard state or public interests or the rights of citizens. The intervention of the prosecutor in the proceedings does not deprive the injured party

of the rights stipulated in Article 53 of the present Code; but under these circumstances the proceedings cannot be dropped because of reconciliation between the injured party and the accused.

Article 28. The significance of court decisions or opinions on civil cases in the adjudication of criminal cases.

A final decision, opinion, or ruling of a court on a civil case is binding upon the court, prosecutor, investigator, and person conducting the police inquiry in criminal proceedings only with regard to the question as to whether an event or act took place, but not with respect to the guilt or innocence of the accused.

Article 29. Civil action in criminal proceedings.

A person who has suffered material damage from a crime has the right, when criminal proceedings are being conducted, to bring a civil action against the accused or against those persons bearing material responsibility for the acts of the accused, which civil action is considered by the court jointly with the criminal case. A civil action in criminal proceedings is not subject to the state tax.

A civil action can be brought at any time from the moment the criminal proceedings are initiated until the beginning of the judicial investigation. The rejection of a suit brought in the form of civil proceedings deprives the claimant of the right to bring the same action in a criminal case.

The prosecutor is authorized to present or support a civil action brought by an injured party if such is required to safeguard state or public interests or the rights of citizens.

If the civil action is not brought, the court may, upon its own initiative, when formulating the sentence, rule on the question of restitution for the material damage caused by the crime.

A person who has not brought a civil action in connection with criminal proceedings, and in like manner a person whose civil suit has not been considered, has the right to bring the action in the form of civil proceedings.

Article 30. Assuring restitution for material damage caused by a crime and executing the sentence as regards the confiscation of property.

Where there is sufficient evidence that the crime has resulted in material damage, the organ of police inquiry, the investigator, the prosecutor, and the court must take steps to assure satisfaction of the civil claim presented or which may be presented in the future.

When conducting criminal proceedings involving a crime the punishment for which may take the form of confiscating property, the organ of police inquiry, the investigator, the prosecutor, and the court must take steps to prevent concealment of the property of the accused.

Article 31. The procedure governing relations between courts, investigators, and organs of police inquiry with corresponding organs of other union republics.

When it is necessary to carry out individual judicial or investigative actions, or to take search measures, on the territory of other union republics, courts, investigators, and organs of police inquiry deal directly with the corresponding organs of the other union republics with respect to the cases they are handling.

Courts, investigators, and organs of police inquiry of the RSFSR must within the limits of their competence carry out the commissions of corresponding organs of other union republics.

When it is necessary to transfer a criminal case to an organ of preliminary investigation, of police inquiry, or a court of another union republic, the file is sent either through the Prosecutor RSFSR or the President of the Supreme Court RSFSR, as appropriate.

Article 32. The procedure governing relations between courts, prosecutors, investigators, and organs of police inquiry and corresponding institutions of foreign states.

The procedure governing the relations of courts, prosecutors, investigators, and organs of police inquiry with the judicial and investigative organs of foreign states, and in like manner the procedure governing the execution of commissions from the latter, is determined by legislation of the USSR and the RSFSR and by international treaties concluded between the USSR and the RSFSR and the states in question.

Article 33. The force of the criminal procedural law with respect to citizens of foreign states and stateless persons.

Proceedings involving crimes committed by citizens of foreign

states and stateless persons are conducted on the territory of the RSFSR in accordance with the regulations of the present Code.

With respect to persons possessing diplomatic immunity, the procedural actions provided for in the present Code are carried out only at their request and with their agreement. Agreement for carrying out these actions is requested through the Ministry of Foreign Affairs.

Article 34. Explanation of certain terms contained in the present Code.

In the absence of special indications, the terms contained in the present Code have the following meanings:

1) 'Court' -- the Supreme Court USSR; the Supreme Court RSFSR; the supreme courts of the ASSR's; kray, oblast, and municipal courts; the courts of autonomous oblasts; the courts of national okrugs; rayon (municipal) people's courts; military tribunals functioning within the limits of their jurisdiction.

2) 'Court of first instance' -- a court empowered to mete out a sentence on a case.

3) 'Appellate court' or 'second instance' -- a court which considers, under cassational procedure, cases involving appeals and protests against sentences and decisions of a court of first instance and court rulings which are not yet final.

4) 'Control court' -- a court which considers, under judicial control procedure, cases involving protests against sentences, decisions, and rulings which have become final.

5) 'Judge' -- a people's judge; a presiding magistrate, deputy presiding magistrate, and member of the court; people's assessor.

6) 'Prosecutor' -- the General Prosecutor USSR; the Prosecutor RSFSR; the prosecutors of ASSR's, krays, oblasts, autonomous oblasts, national okrugs, cities, and rayons, and their deputies and assistants; the prosecutors of sections and administrations of the Prosecutor's Office; military prosecutors acting within the limits of their jurisdiction.

7) 'Investigator' -- the investigator of the Prosecutor's Office; the investigator of organs of state security.

8) 'Legal representatives' -- the parents, foster parents, guardians, or trustees of the accused or the injured party; the representatives of institutions or organizations with guardianship of the accused or the injured party.

9) 'Near relatives' -- parents, children, foster parents, brothers and sisters, grandfather, grandmother, grandchildren, and spouse.

10) 'Sentence' -- a decision handed down by a court in session with respect to the guilt or innocence of the defendant and the application or non-application of punishment to the latter.

11) 'Opinion' -- any decision other than a sentence handed down by a court of the first instance in trying a criminal case; any decision of a court of the second instance; a decision taken by a higher court, except presidiums of courts, in reviewing court sentences, opinions, and rulings which have become final.

12) 'Ruling' -- a decision handed down by presidiums of courts in reviewing court sentences, opinions, and rulings which have become final; any decision taken by judge individually; a decision of the investigator, the person conducting the police inquiry, or the prosecutor rendered in the course of conducting preliminary investigation or police inquiry, except for the indictment.

13) 'Conclusion of the prosecutor' -- the opinion of the prosecutor rendered in court under the conditions prescribed by law.

14) 'Criminal law' -- the criminal laws of the USSR, the Criminal Code of the RSFSR, and also the criminal codes of other union republics when they are to be applied by organs of police inquiry, of preliminary investigation, of the Prosecutor's Office, and by courts of the RSFSR.

15) 'Night' -- from 2200 to 0600, local time.

Chapter Two

Jurisdiction

Article 35. Criminal cases under the jurisdiction of the rayon (municipal) people's court.

The rayon (municipal) people's court has jurisdiction over

all cases except those coming under the jurisdiction of higher courts or military tribunals.

Article 36. Criminal cases coming under the jurisdiction of kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs.

Kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs have jurisdiction over cases involving the crimes enumerated in Articles 64, 35-37, 72, 31 (second part), 84, 85 (first part), 86, 87, 102, 152, 176-179, 189, and 190 of the Criminal Code RSFSR.

Article 37. Criminal cases coming under the jurisdiction of the Supreme Court of an autonomous republic.

The Supreme Court of an autonomous republic has jurisdiction over the cases enumerated in Article 36 of the present Code.

Article 38. Criminal cases coming under the jurisdiction of the Supreme Court RSFSR.

The Supreme Court RSFSR has jurisdiction over cases of special complexity or special public significance accepted for hearing upon its own initiative or upon the initiative of the Prosecutor RSFSR.

Article 39. Criminal cases coming under the jurisdiction of a military tribunal.

The Decree on Military Tribunals determines which criminal cases are subject to the jurisdiction of a military tribunal.

Article 40. The right of a higher court to try a criminal case justiciable by a lower court.

A higher court has the right to accept for hearing, as a court of the first instance, any case justiciable by a lower court.

Article 41. Territorial jurisdiction in criminal cases.

The case must be tried by that court in whose jurisdiction the crime was committed. If it is not possible to determine the place where the crime was committed, the case is justiciable by that court in whose jurisdiction the preliminary investigation or police inquiry was completed.

Article 42. Determining jurisdiction when criminal cases are combined.

When one person or group of persons is charged with having committed several crimes the cases concerning which are justiciable by different courts, the case of all of the crimes is tried by the highest of these courts.

Pursuant to Article 12 of the Decree on Military Tribunals, if a case involving charges against one person or group of persons for the commission of several crimes is justiciable by a military tribunal with respect to even one person or one crime, the case of all persons and crimes involved is tried by a military tribunal.

A case which for one reason or another comes under the jurisdiction of several courts on the same level, is tried by that court in whose jurisdiction the preliminary investigation or police inquiry was completed.

Article 43. The transmission of a criminal case to another jurisdiction.

When a judge, or a court in executive session, ascertains that a scheduled case is not justiciable by the court in question, the case is transferred to another jurisdiction.

When a court has established that a case being tried comes under the jurisdiction of another court, it may continue to handle the case only if it has already been heard at a sitting of the court. However, if the case is justiciable by a higher court or by a military tribunal, it must in all cases be transferred to the other jurisdiction.

A case which a higher court has begun to hear at a court sitting may not be transferred to a lower court.

Article 44. The transmission of a criminal case from the court by which it is justiciable to another court.

In individual situations, with a view to the most rapid, complete, and objective hearing of a case, and also in order best to assure the educational function of the judicial examination of a case, it may be transferred from one court to be heard in another. The transmission of a case on these grounds is permissible only prior to the beginning of hearing at a sitting of the court.

The question as to the transfer of a case for these reasons from one rayon (municipal) people's court to another within the

boundaries of an autonomous republic, kray, oblast, city, autonomous oblast, or national okrug is decided, as appropriate, by the president of the Supreme Court of the autonomous republic, of the kray, oblast, or municipal court, the court of the autonomous oblast, or the court of the national okrug.

The question as to the transfer of a case for the above reasons to a court in another autonomous republic, kray, oblast, city, autonomous oblast, or national okrug is decided by the president of the Supreme Court RSFSR or his deputy.

If with respect to the question of transferring a case to another court there exists an opinion from an executive session the president of the corresponding higher court may, in the event of a disagreement, protest this opinion in accordance with judicial control procedure.

Article 45. The inadmissibility of disputes concerning jurisdiction.

Disputes between courts as to jurisdiction are not permitted. Any case transferred from one court to another in accordance with the procedure prescribed in Articles 43 and 44 of the present Code must unconditionally be accepted for hearing by the court to which it has been transferred.

Chapter Three

Parties to the Proceedings: Their Rights and Obligations

Article 46. The accused.

The accused is a person with respect to whom a ruling has been made, in accordance with the procedure prescribed in the present Code, as to his prosecution as the accused.

When the accused is brought before the court he is called the defendant. A defendant against whom a judgment of "guilty" has been pronounced is called a convicted person.

The accused has the right: to know what is charged with; to offer an explanation of the charges brought against him; to offer evidence; to petition; to familiarize himself with all materials of the case upon completion of the preliminary investigation or police inquiry; to have defense counsel from the moment stipulated in Article 47 of the present Code; to participate in the hearing in a court of the first instance; to challenge; to

file complaints as to the actions and decisions of the person conducting the police inquiry, the investigator, the prosecutor, and the judge.

The defendant has the right to make a final statement.

Article 47. The participation of defense counsel in criminal proceedings.

Defense counsel is permitted to participate in the case from the moment the accused has been informed of the completion of the preliminary investigation and has been furnished with all of the case material in order to familiarize himself with it.

In cases involving minors or persons who by reason of physical or mental disability are unable to exercise their right of defense personally, defense counsel is permitted to participate in the case from the moment the charges are brought.

In cases where no preliminary investigation is made, defense counsel is permitted from the moment the accused is arraigned before the court.

Advocates, representatives of trade-union organizations and other social organizations may serve as defense counsel.

Near relatives and the legal representatives of the accused, as well as other persons, may be permitted to serve as defense counsel by decision of the court or ruling of a judge.

However, one person cannot serve as defense counsel for two accused persons if the interests of one of the latter contravene the interests of the other.

Article 48. The engagement, appointment, and replacement of defense counsel.

From among those persons enumerated in Article 47 of the present Code a defense counsel is engaged by the accused, his legal representative, or other persons upon the instructions of, or agreement with, the accused.

At the request of the accused the participation of defense counsel is assured by the investigator and the court.

In those cases where participation by the defense counsel

chosen by the accused is impossible for a long period of time the investigator and the court shall have the authority to propose to the accused that he engage another defense counsel, or to appoint defense counsel for the accused through the college of advocates.

Article 49. The obligatory participation of defense counsel.

Participation of defense counsel in the court hearing is obligatory in cases:

- 1) in which a state or public prosecutor is participating;
- 2) of mute, deaf, blind, and other persons who because of their physical or mental disability cannot personally exercise their right of defense;
- 3) of minors;
- 4) of persons who do not know the language in which the proceedings are conducted;
- 5) of persons between whose interests there are conflicts, and at least one of whom has defense counsel;
- 6) of persons arraigned before the court for crimes punishable by death.

In the cases indicated in items two and three of the present article, participation of defense counsel is mandatory during the preliminary investigation as well.

If, in the cases specified in the present article, defense counsel has not been engaged by the accused himself, his legal representative, or other persons upon instructions from him, the prosecutor or the court is required to assure the participation of defense counsel in the proceedings.

Article 50. Refusal of counsel

The accused has the right, at any moment in the proceedings, to refuse counsel. Refusal is permitted only upon the initiative of the accused himself, and cannot serve as an obstacle to the continuing participation in the case of a state or public prosecutor, or of the defense counsel of other defendants.

Refusal of counsel on the part of a minor or an accused person who because of physical or mental disability cannot personally exercise his right to defense, is not binding upon the court, or the investigator and prosecutor, as appropriate.

Article 51. The obligations and rights of defense counsel.

Defense counsel must utilize all legally prescribed means and methods of defense in order to discover evidence exculpating the accused or mitigating his responsibility, and just render the necessary legal aid to the accused.

From the moment he is allowed to enter the case, defense counsel has the right: to consult with the accused; to familiarize himself with all materials on the case and extract the necessary information; to submit evidence; to petition; to participate in the court hearing; to challenge; to file complaints as to the actions and decisions of the investigator, the prosecutor, and the court. With the permission of the investigator, defense counsel may be present at interrogations of the accused and at other investigative actions performed at the petition of the accused or his counsel.

In those cases where defense counsel is allowed to enter the case from the moment the charges are brought, he may also:

- 1) be present when charges are preferred and when the accused is interrogated and, with the permission of the investigator, question the accused;
- 2) be present when other investigative actions are performed and, with the permission of the investigator, question witnesses, the injured party, and experts who are testifying;
- 3) take written notes as to the correctness and completeness with which those investigative actions in which he has participated are entered in the minutes;

The investigator may answer the questions of defense counsel, but he is not required to record his answers in the minutes.

An advocate may not abandon the defense of the accused once he has accepted it.

Article 52. The suspect.

A suspect is:

- 1) a person who has been detained upon suspicion of having committed a crime;
- 2) a person with respect to whom a measure of restraint has been employed for purposes of bringing charges.

The suspect has the right to offer explanations, to petition, and to file complaints as to the actions and decisions of the person conducting the police inquiry, the investigator, and the prosecutor.

Article 53. The injured party.

The injured party is a person who has suffered moral, physical, or property damage as the result of a crime. With respect to naming a citizen as the injured party, the person conducting the police inquiry, the investigator, and the judge make a ruling, while the court hands down a decision.

A citizen named as the party injured by a crime has the right to make depositions on the case. The injured party or his representative has the right: to submit evidence; to familiarize himself with the materials on the case from the moment that the preliminary investigation is completed; to participate in the examination of evidence at the judicial investigation; to challenge; to file complaints as to the actions of the person conducting the police inquiry, the investigator, the prosecutor, and the court; and to file complaints against the sentence or decision of the court and rulings of the judge.

In those cases specified in parts one and two of Article 27 of the present Code, the injured party has the right, during the court hearing, personally or through his representative to support the charge.

In cases involving crimes resulting in the death of the injured party, the rights stipulated by the present article are possessed by his near relatives.

Article 54. The civil plaintiff.

The civil plaintiff is a citizen, institution, enterprise, or organization which has suffered material damage from a crime and which has demanded restitution in accordance with Article 29 of the present Code. With respect to naming a citizen as the civil plaintiff the person conducting the police inquiry, the investigator, and the judge make a ruling, while the court hands down a decision.

The civil plaintiff or his representative has the right: to present evidence; to petition; to participate in the court hearing; to request the organ of police inquiry, the investigator, and the court to take steps to assure the claim presented by plaintiff; to support the civil claim; to familiarize himself with the materials on the case from the moment that the preliminary investigation is completed; to challenge; to file complaints against the actions of the person conducting the police inquiry, the investigator, the prosecutor, and the court; and to file complaints against court sentences and decisions with respect to the civil claim.

The civil plaintiff must, upon the demand of the court, make available those documents in his possession which relate to the claim which has been preferred.

Article 55. The civil defendant.

Parents, foster parents, guardians, and other persons, as well as institutions, enterprises, and organizations, who are legally responsible for the damage caused by the criminal acts of the accused may be prosecuted as civil defendants. With respect to prosecution as civil defendant, the person conducting the police inquiry, the investigator, and the judge make a ruling, while the court hands down a decision.

The civil defendant or his representative has the right: to object to the claim preferred; to offer explanations with respect to the substance of the claim; to present evidence; to petition; to familiarize himself with the materials on the case, so far as the civil claim is concerned, from the moment that the preliminary investigation is completed; to participate in the court hearing; to challenge; to file complaints against the actions of the person conducting the police inquiry, the investigator, the prosecutor, and the court; and to file complaints against court sentences and decisions as respects the civil claim.

Article 56. The representatives of the injured party, the civil plaintiff, and the civil defendant.

The following may enter the case as representatives of the injured party, the civil plaintiff, and the civil defendant: advocates, near relatives and other persons legally empowered to represent, in criminal proceedings, the legal interests of the injured party, the civil plaintiff, or the civil defendant, as appropriate.

Article 57. The interpreter.

The interpreter is a person who speaks the languages & knowledge of which is necessary for interpretation, and who is appointed by the organ of police inquiry, the investigator, the prosecutor, or the court in the circumstance specified in Article 17 of the present Code.

The interpreter must appear when summoned and give a complete and accurate interpretation when instructed.

In the event of a wilfully inaccurate interpretation, the interpreter is responsible under Article 181 of the Criminal Code RSFSR. If the person designated as interpreter declines to appear or to fulfill his obligations, he is liable to measures of social action or he may be fined in an amount not to exceed one hundred rubles. The fine is imposed by the court under the procedure provided for in Article 323 of the present Code.

The rules of the present article apply to a person understanding the sign language of a mute or deaf person, who has been engaged to participate in the proceedings.

Article 58. The obligation to make explanations and assure the rights of persons participating in the proceedings.

The court, the prosecutor, the investigator, and the person conducting the police inquiry are required to explain to these persons participating in the proceedings what their rights are, and to assure the possibility of the exercise of those rights.

Chapter Four

Circumstances Excluding the Possibility of Participating in the Proceedings. Challenges

Article 59. Circumstances disqualifying a judge from participating in the examination of a criminal case.

A judge may not participate in the examination of a case:

- 1) if he is an injured party, civil plaintiff, civil defendant, or witness, or if he has participated in the case as an expert, interpreter, person conducting the police inquiry, investigator, prosecutor, defense counsel, legal representative of the accused, representative of the injured party, of a civil plaintiff, or of a civil defendant;
- 2) if he is a relative of the injured party, the civil plaintiff, civil defendant, or their representatives, a relative of the accused or his legal representative, a relative of the prosecutor, defense counsel, investigator, or the person conducting the police inquiry;
- 3) if there exist other circumstances giving grounds for an assumption that the judge is personally interested in the case, directly or indirectly.

The bench hearing a criminal case may not include persons

who are related to one another.

Article 60. The inadmissibility of repeated participation by a judge in hearing a case.

A judge who has participated in the hearing of a criminal case in a court of first instance may not participate in the hearing of this case in a court of second instance or by way of judicial control, and may not participate in a new hearing of the case in a court of first instance in the event of the setting aside of a sentence or a decision to terminate proceedings handed down with his participation.

A judge who has participated in the hearing of a case in a court of second instance may not participate in the hearing of this case in a court of first instance or by way of judicial control, or in a rehearing of the case in a court of second instance after reversal of an opinion handed down with his participation.

A judge who has participated in the hearing of a case by way of judicial control may not participate in hearing the same case in a court of first or second instance.

Article 61. Challenging a judge.

Where the circumstances indicated in articles 59 and 60 are present, the judge is required to disqualify himself. The judge may be challenged on the same grounds by the prosecutor, the defense counsel, the defendant, the injured party, the civil plaintiff, the civil defendant, or their representatives.

The challenge should be substantiated and presented prior to commencement of the trial. Subsequent challenges are allowed only in those cases where the grounds for the challenge became known to the person presenting it only after commencement of the trial.

Article 62. The procedure for ruling on a challenge presented against a judge.

A challenge presented against a judge is ruled on by the remaining judges in the absence of the challenged judge, who however has the right, publicly and beforehand, to provide the remaining judges with his own explanation as regards the challenge presented to him. In the event of a tie vote the judge is considered disqualified.

A challenge of two judges or the whole bench is ruled on by

a full bench and decided by a simple majority vote.

Questions relating to challenge are decided by the court in chambers.

Article 53. Challenging the prosecutor.

A prosecutor may not participate in the proceedings on a case if the grounds enumerated in Article 59 of the present Code are present.

The participation of a prosecutor in the conduct of the preliminary investigation or police inquiry, or in supporting the charge in court, does not constitute an obstacle to his further participation in the case.

If grounds for removal are present, the prosecutor is required to disqualify himself from participation in the case. On these same grounds the prosecutor may be challenged by the accused, the defense counsel, the injured party, the civil plaintiff, the civil defendant, or their representatives.

During the conduct of the police inquiry and the preliminary investigation the question as to the removal of the prosecutor is decided by the superior prosecutor; in court, it is decided by the bench hearing the case.

Article 54. Challenging the investigator and the person conducting the police inquiry.

An investigator or person conducting the police inquiry may not participate in the examination of a case if the grounds specified in Article 59 of the present Code are present. Their participation in the police inquiry or preliminary investigation conducted previously on the case in question does not constitute grounds for removal.

Where grounds for removal are present, the investigator or the person conducting the police inquiry must disqualify himself from participation in the case. On these same grounds, both may be challenged by a suspect, accused person, defense counsel, injured party, civil plaintiff, civil defendant, or their representatives.

The question as to the removal of the investigator or the person conducting the police inquiry is decided by the prosecutor.

Article 65. Challenging the court reporter.

The rules set forth in articles 59 and 61 of the present Code apply to the court reporter. His previous participation in the case as a court reporter does not constitute grounds for removal.

The question as to the removal of a court reporter is decided by the court hearing the case.

Article 66. Challenging the interpreter.

An interpreter may not take part in the proceedings on a case in the presence of the grounds specified in Article 59 of the present Code, or in the event that he is found to be incompetent.

Where these grounds are present, the interpreter may be challenged by a suspect, an accused person, defense counsel, injured party, civil plaintiff, civil defendant, or their representatives.

Previous participation in the case by the person in question acting as interpreter does not constitute grounds for removal.

The question as to the removal of an interpreter during the conduct of the police inquiry or the preliminary investigation is decided either by the person conducting the inquiry, the investigator, or the prosecutor, as appropriate; in court, it is decided by the bench hearing the case.

Article 67. Challenging an expert witness.

An expert witness may not take part in the proceedings on a case:

1) where the grounds specified in Article 59 of the present Code are present; his previous participation in the case as an expert witness does not constitute grounds for removal;

2) if he has been, or is at present, in a condition of judicial or other dependence upon the accused, the injured party, a civil plaintiff or civil defendant;

3) if in connection with the case in question he has reviewed materials serving as grounds for initiating criminal proceedings;

4) in the event that he is found to be incompetent.

The question as to the removal of an expert witness is decided in accordance with the procedure prescribed by Article 66 of the present Code.

Chapter Five

Evidence

Article 68. Circumstances subject to proof in criminal proceedings.

In the conduct of the police inquiry, the preliminary investigation, and the court hearing of a criminal case the following are subject to proof:

- 1) the event of the crime (time, place, method, and other circumstances of the commission of the crime);
- 2) the guilt of the accused in the commission of the crime, and the motives for the crime;
- 3) circumstances influencing the degree and character of responsibility of the accused enumerated in articles 38 and 39 of the Criminal Code RSFSR, and other circumstances indicating the character of the accused;
- 4) the character and amount of the damage caused by the crime.

The circumstances facilitating the commission of the crime are also subject to proof.

Article 69. Evidence.

Evidence in criminal proceedings is constituted by any factual data on the basis of which, in accordance with legally prescribed procedure, the organs of police inquiry, the investigator, and the court establish the presence or absence of a socially dangerous act, the guilt of the person who has committed such an act, and other circumstances bearing upon the correct resolution of the case.

These data are established by: the testimony of witnesses, the testimony of the injured party, the testimony of the suspect, the testimony of the accused, the conclusion of expert witness, material evidence, the minutes of investigative and judicial actions, and other documents.

Article 70. Gathering evidence.

The person conducting the police inquiry, the investigator, the prosecutor, and the court shall have the right, with respect to a case being prosecuted by them, to summon in accordance with the procedure established by the present Code any person for questioning or for offering expert testimony; to conduct inspections, searches,

and other investigative actions provided for in the present Code; to require that institutions, enterprises, organizations, officials, and citizens make available objects and documents which might establish factual data necessary for the case; and to require that expert examinations be made.

Evidence may be introduced by a suspect, an accused person, defense counsel, the prosecutor, the injured party, a civil plaintiff, a civil defendant, or their representatives, and any citizens, institutions, enterprises, and organizations.

All evidence gathered on the case is subject to careful, thorough, and objective evaluation by the person conducting the police inquiry, the investigator, the prosecutor, and the court.

Article 71. The evaluation of evidence.

The court, the prosecutor, the investigator, and the person conducting the police inquiry evaluate the evidence on the basis of their own intimate conviction based on a thorough, complete, and objective consideration of all circumstances of the case in their totality, being guided by the law and socialist legal philosophy.

No evidence for the court, the prosecutor, the investigator, or the person conducting the police inquiry possesses previously established strength.

Article 72. Persons called as witnesses.

Any person who may possess knowledge of any circumstances to be established with respect to the case in question can be called as a witness to make depositions.

The following may not be examined as witnesses:

- 1) defense counsel, with respect to circumstances of the case which became known to him in connection with the performance of his duties as counsel;
- 2) a person who because of physical or mental disability is not capable of correctly understanding circumstances relevant to the case, or of giving correct testimony with regard to them.

Participation in the case on the part of the legal representatives of an injured party, suspect, or accused person does not rule out the possibility of their being questioned as witnesses.

Article 73. The obligations of a witness.

A witness must appear when summoned by the person conducting the police inquiry, the investigator, the prosecutor, or the court, and give correct testimony; he must communicate everything he knows about the case, and reply to the questions that are asked.

When a witness fails to appear without good and sufficient reason, the person conducting the police inquiry, the investigator, the prosecutor, or the court has the authority to subject him to temporary arrest.

For refusal or evasion of giving testimony, witnesses are liable under Article 182 of the Criminal Code RSFSR, and for wilfully giving false testimony they are liable under article 131 of the Criminal Code RSFSR.

Article 74. The testimony of a witness.

A witness may be questioned with regard to any circumstances subject to proof with regard to the case in question, including circumstances relevant to the character of the accused, the injured party, and his relationships with them. Factual data furnished by a witness may not serve as evidence if the latter cannot indicate the source of his information.

Article 75. The testimony of the injured party.

The injured party is required to answer the summons of the person conducting the police inquiry, the investigator, the prosecutor, or the court, and to give correct depositions; to communicate everything he knows about the case, and to reply to the questions that are asked.

The injured party may be questioned with regard to all circumstances subject to proof in connection with the case in question, and also with regard to his relations with the accused. Factual data furnished by the injured party may not serve as evidence if the latter cannot indicate the source of his information.

If the injured party fails to appear without good and sufficient reason, if he refuses or evades giving testimony, or if he knowingly gives false testimony, the rules of Article 73 of the present Code are applicable.

Article 76. The testimony of a suspect.

A suspect shall have the right to make depositions with regard to the circumstances serving as the grounds for his restraint or confinement under guard, and also with regard to other circumstances relevant to the case which are known to him.

Article 77. The testimony of an accused person.

An accused person shall have the right to make depositions with regard to the charge brought against him, and also with regard to other circumstances known to him which are relevant to the case, and evidence figuring in the case.

An acknowledgment by the accused of his own guilt may serve as the basis for indictment only where there is confirmation of acknowledgment of the totality of existing evidence on the case.

Article 78. Expert testimony.

Expert testimony is called for in those cases when, in conducting the police inquiry, the pre-trial investigation, and the court hearing there is a need for special knowledge of science, engineering, art, or trades. Expert testimony is furnished by experts from appropriate institutions or by other specialists called in by the person conducting the police inquiry, by the investigator, by the prosecutor, or by the court. Any person possessing the requisite knowledge for giving conclusions may be called as an expert. The questions asked of an expert, and likewise his conclusion, may not go beyond the limits of the special knowledge of the expert.

Article 79. Obligatory expert testimony.

Expert testimony is obligatory:

- 1) in establishing the causes of death and the character of bodily injuries;
- 2) in determining the mental state of an accused person or suspect in those cases where there is doubt as to his responsibility or ability, at the time of the proceedings on the case, to realize his own actions or to control them;
- 3) in determining the mental or physical state of a witness or the injured party in cases where there is doubt as to his ability correctly to perceive circumstances relevant to the case, and to give correct testimony on them;
- 4) in establishing the age of an accused person, a suspect, or an injured party in those cases when this information is relevant

to the case, and where documents with respect to his age are lacking.

Article 80. The conclusion of expert witness.

The expert witness gives a conclusion as to his opinion on the basis of investigations conducted in accordance with his special knowledge, and bears personal responsibility for his conclusion.

When several experts are appointed for purposes of giving expert testimony, they consult together prior to giving their conclusion. If the experts in one special field arrive at a common conclusion, the latter is signed by all of the experts. If there is disagreement among the experts, each expert gives his own conclusion individually.

The conclusion of an expert is not binding upon the person conducting the police inquiry, the investigator, the prosecutor, or the court. However, any disagreement with the conclusion must be substantiated.

Article 81. Supplementary and repeated expert testimony.

In the event that a conclusion is lacking in clarity or completeness, supplementary expert testimony may be called for from the same expert or another one.

In the event that the conclusion of the expert is inadequately substantiated, or if there is doubt as to its correctness, repeated expert testimony may be called for from another expert or other experts.

Article 82. The obligations and rights of expert witness.

The expert must appear in response to summons from the person conducting the police inquiry, the investigator, the prosecutor, or the court and give an objective conclusion regarding the questions asked of him. If a question goes beyond the limits of the special knowledge of the expert, or if the materials furnished to him are inadequate for giving a conclusion, the expert shall inform the organ which called for the expert testimony, in writing, of the impossibility of giving a conclusion.

The expert shall have the right:

- 1) to familiarize himself with the materials on the case relevant to the object of expert examination;
- 2) to request that he be furnished with additional materials necessary to give a conclusion;

3) with the permission of the person conducting the police inquiry, the investigator, the prosecutor, or the court, to be present at interrogations and other investigative and judicial actions and to question the person being interrogated with regard to the object of the expert examination.

If an expert refuses or avoids the performance of his obligations without good and sufficient reason, or if he gives a false conclusion knowingly, or if he fails to answer the summons of the person conducting the police inquiry, the investigator, the prosecutor, or the court without good and sufficient reason, the measures provided by Article 73 of the present Code shall be applied.

Article 82. Material evidence.

Material evidence includes objects which have served as weapons in a crime, or on which evidence of a crime has been preserved, or which were the objects of the criminal acts of the accused, and likewise money and other things of value obtained by criminal means, and all other objects which might serve as means for discovering the crime, establishing the factual circumstances of the case, identifying guilty parties, or else disproving the charge or mitigating the guilt of the accused.

Article 84. The preservation of material evidence.

Material evidence must be described in detail in the record of inspection, photographed where possible, and made a part of the file by order of the person conducting the police inquiry, the investigator, the prosecutor, or by decision of the court. Material evidence must be kept with the file on the criminal case.

If by reason of their awkwardness or other cause certain objects cannot be kept with the file on the criminal case, they must be photographed, sealed insofar as possible, and kept in a place indicated by the person making the police inquiry, the investigator, the prosecutor, or the court, with an appropriate notation being made in the file.

When the file is transferred from the organ of police inquiry to the investigator, or from one organ of police inquiry or investigator to another, or when the file is sent to the prosecutor and the court, or when the file is transferred from one court to another, the material evidence is forwarded along with the file, except for the case specified in the second part of the present article.

Article 85. Time limits for the preservation of material evidence.

Material evidence is retained until the sentence enters into legal force, or until expiration of the time limit for appealing the ruling or the decision on terminating the proceedings. In those cases where a dispute as to the ownership of the property is to be settled by way of civil proceedings, the material evidence is retained until the court's decision enters into legal force.

In individual cases material evidence may be returned to the owner prior to expiration of the time limits specified in the first part of the present article, if such is possible without prejudice to the proceedings on the case.

Perishable material evidence, if it cannot be returned to the owner, is delivered to appropriate institutions for appropriate utilization. Where necessary, the owner is compensated in objects of the same kind and quality, or else he is reimbursed in accordance with the value of the material evidence.

Article 86. Measures taken with respect to material evidence in settling a criminal case.

The question as to material evidence may be settled in the sentence, decision, or ruling on termination of the proceedings. In this case:

- 1) weapons of the crime belonging to the accused shall be confiscated and turned over to appropriate institutions, or destroyed;
- 2) objects, commerce in which is forbidden, shall be turned over to the appropriate institutions, or destroyed;
- 3) objects which are of no value and cannot be utilized shall be destroyed; or in the event of petition by interested parties or institutions, they may be turned over to them;
- 4) money and other things of value acquired by criminal means shall, pursuant to judgment of the court, be put into circulation and the proceeds turned over to the state; other objects shall be returned to their legal owners or, where the latter have not been ascertained, shall become the property of the state. Any dispute as to the ownership of such objects shall be settled by way of civil proceedings;
- 5) documents constituting material evidence are kept with the file throughout the entire period of preservation of the latter, or else they are turned over to interested institutions.

Article 87. Records of investigative and judicial proceedings.

The records attesting the circumstances and facts established in the course of inspection, the giving of testimony, seizure, search, detention, confrontation for purposes of identification, and the conduct of investigative experiment, prepared in accordance with the procedure provided for in the present Code, constitute evidence on the criminal case.

Article 88. Documents.

Documents constitute evidence if the circumstances and facts attested to or set forth by institutions, enterprises, organizations, officials, and citizens are relevant to the criminal proceedings.

In those cases where the documents possess the characteristics set forth in Article 83 of the present Code they constitute material evidence.

Chapter Six

Measures of Restraint

Article 89. The employment of measures of restraint.

If there are adequate grounds for assuming that the accused will conceal himself from the police inquiry, the pre-trial investigation, or the court, or will obstruct the process of ascertaining the truth about the criminal case, or will engage in criminal activity, and also in order to ensure execution of sentences, the person conducting the police inquiry, the investigator, the prosecutor, and the court shall have the right to carry out one of the following measures of restraint: a written promise not to leave the area, a personal guarantee or guarantee from social organizations; confinement under guard.

With the sanction of the prosecutor or by ruling of the court, bail may be employed as a measure of restraint.

In the case of military personnel, observation by the command of the military units to which they are attached may be employed as a measure of restraint.

In the absence of grounds making it necessary to employ a measure of restraint, the accused is required to promise that he

will appear in response to summons and that he will give notification of any change of domicile.

Article 90. The employment of a measure of restraint with respect to a suspect.

In exceptional cases a measure of restraint may be employed with respect to a person suspected of having committed a crime even prior to the bringing of charges. In this case the charge must be preferred no later than ten days from the time the measure of restraint is employed. If during this period no charge is preferred, the measure of restraint is rescinded.

Article 91. The circumstances taken into account in deciding upon the measure of restraint.

In deciding the question as to the necessity for employing a measure of restraint, and also in selecting one measure or another, the person conducting the police inquiry, the investigator, the prosecutor, and the court take into account the following, in addition to the circumstances enumerated in Article 89 of the present Code: the seriousness of the charges; the character of the suspect or accused person; his occupational activities, age, state of health, family situation, and other circumstances.

Article 92. The ruling and decision as to employing a measure of restraint.

With respect to employing a measure of restraint the person conducting the police inquiry, the investigator, or the prosecutor makes a reasoned ruling, and the court formulates a reasoned decision specifying the crime of which the person in question is suspected or accused and the grounds for selecting the measure of restraint being employed. The ruling or decision is communicated to the person with respect to whom it was formulated.

Article 93. The written promise not to leave the area.

The written promise not to leave the area consists in obtaining from the suspect or accused person a promise not to leave his domicile or place of temporary residence without permission of the person conducting the police inquiry, the investigator, the prosecutor, or the court. In the event of violation of his written promise by the suspect or the accused person, a more strict measure of restraint may be employed -- a fact of which he must be apprised when the promise is obtained.

Article 94. The personal guarantee.

The personal guarantee consists in the assumption, by persons worthy of trust, of a written obligation to be responsible for the proper behavior and appearance of the suspect or accused person when summoned by the person conducting the police inquiry, the investigator, the prosecutor, or the court. The number of guarantors shall not be less than two.

When obtaining a written statement of personal guarantee, the guarantor must be informed as to the nature of the case with respect to which the measure of restraint in question has been decided upon, and as to the liability in the event that the suspect or accused person performs acts for whose prevention the measure of restraint was taken in the form of the personal guarantee. In the latter case, each guarantor shall forfeit an amount not to exceed 1,000 rubles, in accordance with the procedure prescribed by Article 323 of the present Code, or measures of social action may be employed.

Article 95. The guarantee of a social organization.

The guarantee of a social organization consists in a written promise that the social organization will answer for the proper behavior and appearance of the suspect or accused person when summoned by the person conducting the police inquiry, the investigator, the prosecutor, or the court.

The social organization furnishing the guarantee must be informed as to the nature of the case with respect to which the measure of restraint in question was selected.

Article 96. Confinement under guard.

Confinement under guard as a measure of restraint is employed with due observance of the requirements of Article 11 of the present Code, only in cases involving crimes for which the law provides punishment in the form of a deprivation of freedom.

With respect to persons accused of committing crimes enumerated in articles 64-74, 75 (second part), 77-79, 84, 85 (first part), 86, 87, 88, 89 (second and third parts), 90 (second and third parts), 91, 92 (third part), 93 (third part), 98 (second part), 102, 103, 108, 117, 119 (second part), 121 (second part), 144 (second and third parts), 145 (second and third parts), 146, 147 (third part), 149 (second part), 154 (second part), 173 (second part), 176 (second part), 177 (second part), 179 (second part), 238 (items b and c), 240 (items b and c),

242 (item b), 247 (items b and d), 248, 249 (item b), 251 (item b), 255 (item f), 257 (item d), 259 (item c), 261, 262 (item b), and 263-267 of the Criminal Code RSFSR, confinement under guard as a measure of restraint may be employed only on the grounds of the danger of the crime.

Article 97. Time limits for detention under guard.

Detention under guard while a case is being investigated shall not be continued for more than two months. This period may be prolonged only in view of the special complexity of the case by the prosecutor of an autonomous republic, kray, oblast, autonomous oblast, national okrug, the military prosecutor of a military district or of a fleet of the navy -- up to three months; by the Prosecutor RSFSR or the Chief Military Prosecutor -- up to six months from the day of confinement under guard. Further prolongation of the period of detention under guard may be effected only in exceptional cases by the General Prosecutor USSR, the period of extension not to exceed three months.

Article 98. Measures of care for children and protection of the property of a person detained under guard.

The organ of police inquiry, the investigator, the prosecutor, and the court are required:

1) when the person being confined under guard has minor children who are left without supervision -- to put them into the hands of relatives or other persons, or into institutions, for purposes of care;

2) when the person being confined under guard possesses property or a dwelling left without protection -- to take measures for their protection.

The organ of police inquiry, the investigator, the prosecutor, or the court shall inform the person confined under guard as to the measures taken.

Article 99. Bail.

Bail consists of money or valuables deposited with the court by the accused, the suspect, or another person or organization to guarantee the appearance of the accused or the suspect when summoned by the person conducting the police inquiry, the investigator, the prosecutor, or the court. A record attesting to the receipt of the bail is prepared, and a copy is furnished to person who has provided the bail.

The amount of bail is fixed by the organ selecting this measure of restraint in accordance with the circumstances of the case.

When bail is deposited, the person furnishing the bail shall be informed as to the nature of the case for which this measure of restraint has been selected.

In the event that the accused person or the suspect fails to appear in answer to a summons from the person conducting the police inquiry, the investigator, the prosecutor, or the court, the bail which has been deposited is converted into revenue of the state by a decision of the court rendered under the procedure prescribed by Article 323 of the present Code.

Article 100. Surveillance by the command of a military unit.

Surveillance by the command of a military unit of an accused person who is in military service consists in taking measures provided for in the regulations of the armed forces of the USSR to assure the proper behavior of the accused and his appearance when summoned by the person conducting the police inquiry, the investigator, the prosecutor, or the court.

The command of the military unit shall be informed as to the nature of the case with respect to which the measure of restraint in question has been decided upon.

The command of the military unit shall send a written notification as to the establishment of observation, to the organ which has selected this measure of restraint.

Article 101. Rescinding or changing the measure of restraint.

The measure of restraint is rescinded when there is no longer any necessity for it or when it is changed to a more strict or less severe measure, if this is necessitated by the circumstances of the case. The abrogation or change of a measure of restraint is effected on the basis of a reasoned ruling by the person conducting the police inquiry, the investigator, or the prosecutor; or if the case has already been transferred to court, by a reasoned decision of the court.

The abrogation or change by the person conducting the police inquiry, or by the investigator, of a measure of restraint selected upon instructions from the prosecutor, is permitted only with the sanction of the prosecutor.

Chapter Seven

Minutes of Proceedings, Time Limits, and Court Expenses

Article 102. The requirement for keeping minutes of the proceedings.

In the conduct of investigative actions, and also during the executive sessions and regular sittings of courts of first instance, it is mandatory that minutes of the proceedings be kept.

The minutes must show the place and date of the proceedings, and give the time of their commencement and completion, and the names of the persons participating in the proceedings. The minutes shall set forth the proceedings in the order in which they occurred, those circumstances substantially relevant to the case which were established in the course of the proceedings, and the statements of the persons participating in the proceedings.

The minutes are to be signed by the persons indicated in the corresponding articles of the present Code. All changes, additions, and corrections made in the minutes shall be stipulated and attested to by the signatures of those persons.

Article 103. The computation of time limits.

The time limits fixed in the present Code are counted in hours, days, and months. The hour and day at which the period of time begins are not counted when computing time limits.

When counting time limits in days, the period expires at 12:00 midnight of the last day. When counting time limits in months, the period expires on the corresponding day of the last month; but if that month does not have a corresponding day, the period expires on the last day of that month. If the expiration of the period coincides with a non-working day, the first subsequent working day is counted as the last day of the period.

A time limit is not considered to have lapsed if the appeal or other document is mailed prior to the expiration of the period or, for persons confined under guard, if the appeal or other document is delivered to the administration of the place of confinement prior to the expiration of the period.

Article 104. Extension of a time limit which has lapsed.

A time limit which has been allowed to lapse for good and sufficient reason may be extended by the person conducting the police inquiry, the investigator, the prosecutor, or by decision of the court hearing the case.

Upon petition by an interested party, the execution of a judgment appealed after expiration of the established time limit may be stayed pending a decision on the question of extending the time limit which had been allowed to lapse.

Article 105. Court costs.

Court costs consist of:

- 1) sums paid to witnesses, injured party, experts, interpreters, witnesses of pre-trial investigative actions, etc.;
- 2) sums expended for the storage, forwarding, and examination of material evidence;
- 3) sums to be paid for legal consultation in those cases specified in Article 49 (second part) of the present Code;
- 4) other expenses incurred in trying the case in question.

Article 106. Reimbursement of witnesses, the injured party, experts, interpreters, and witnesses of pre-trial investigative actions for expenses incurred.

A person summoned as a witness, injured party, expert, interpreter, or witness of pre-trial investigative actions is reimbursed in an amount equivalent to his average pay at his place of employment for all time lost by him as a result of having been summoned by the person conducting the police inquiry, the investigator, the prosecutor, or the court. Persons who are not salaried workers or employees are reimbursed for having been called away from their ordinary activities. Also, all of the aforementioned persons shall be entitled to compensation for expenses incurred in appearing in court.

An expert or interpreter shall be entitled to compensation for the performance of his duties except for those cases where these duties are performed by way of official functions.

Compensation and reimbursement for expenses incurred in appearing in court are paid out of the funds of organs of police inquiry, of preliminary investigation, and of the court. The procedure for payment and the sums to be paid are fixed by the Council of Ministers RSFSR.

Article 107. The recovery of court costs.

Court costs shall be borne by convicted persons or assumed by the state.

If a defendant is found guilty, the court shall have the right to collect the court costs from him. In this connection the court may collect the court costs from a defendant who is found guilty but whose punishment is suspended.

If several defendants are found guilty in one case, the court decides what share of the court costs is to be borne by each of them, taking into account the guilt, degree of responsibility, and property position of such persons.

In the event of the termination of the proceedings, or of a finding of "not guilty," or if the person from whom the court costs are to be collected is insolvent, the costs are assumed by the state.

where there is a finding of "not guilty" in proceedings instigated exclusively by complaint of the injured party, the court shall have the authority to collect the court costs, entirely or in part, from the person upon whose complaint the proceedings were initiated.

The procedure for paying an advocate appointed to participate in the case is governed by the rules of Article 322 of the present Code.

SECTION TWO

INITIATION OF CRIMINAL PROCEEDINGS, POLICE
INQUIRY, AND PRELIMINARY INVESTIGATION

Chapter Eight

The Initiation of Criminal Proceedings

Article 108. The grounds and basis for initiating criminal proceedings.

The following constitute grounds for initiating criminal proceedings:

- 1) statements and written communications from citizens;

- 2) communications from trade-union and komsomol organizations, people's detachments for the protection of public order, comrades' courts, and other social organizations;
- 3) communications from institutions, enterprises, organizations, and officials;
- 4) articles, items, and letters published in the press;
- 5) voluntary confession;
- 6) the direct discovery of the indicia of a crime by an organ of police inquiry, a prosecutor, or a court.

Proceedings may be instigated only on those cases where there are sufficient data indicating the elements of a crime.

Article 109. The obligation to investigate statements and communications concerning a crime.

The prosecutor, the investigator, the organ of police inquiry, and the judge are required to accept statements and communications concerning any crime which has been committed or is being planned, and to make a decision on it within three days from the time of receiving the statement or communication, or in exceptional cases, within ten days.

With respect to statements and communications which have been received, the requisite materials may be demanded and explanations obtained, without however carrying out the investigative actions provided for in the present Code.

Upon receipt of a statement or communication, one of the following decisions shall be taken:

- 1) the initiation of criminal proceedings;
- 2) a refusal to initiate criminal proceedings;
- 3) forwarding of the statement or communication to another investigative or judicial jurisdiction.

The person who has made the report shall be informed of the decision.

Prior to initiating proceedings with respect to crimes specified in articles 112, 130 (first part), and 131 of the Criminal Code RSFSR the judge shall take steps to reconcile the injured party with the person against whom the complaint has been made. If reconciliation is not reached, the judge, providing there is sufficient evidence, makes a ruling as to the initiation of proceedings and the arraignment of the person against whom the complaint has been made. The judge may joint counter claims into a single proceeding with the complaint of the injured party.

Article 110. Statements and communications concerning a crime.

The statements of citizens may be verbal or written. Verbal statements are entered in a record signed by the deponent and an official of the organ of police inquiry, by the investigator, by the prosecutor, or by the judge accepting the statement. A written statement shall be signed by the person from whom it originates.

The deponent shall be informed as to his liability for a willfully false report. A notation to this effect is made in the record and attested by the signature of the deponent.

The communications of institutions, enterprises, organizations, and officials shall be made in written form.

Article 111. Voluntary confession.

In the event of a voluntary confession the character of the person who has presented himself in order to confess is established, and a record is prepared in which the statement made by the latter is set forth. The record is signed by the person who has presented himself in order to confess and by the person conducting the police inquiry, the investigator, the prosecutor, or the judge who has drawn up the record.

Article 112. The procedure for initiating criminal proceedings.

If there is cause and grounds for initiating criminal proceedings, the prosecutor, the investigator, the organ of police inquiry, or the judge is required, within the limits of his competence, to instigate criminal proceedings.

A ruling with respect to the initiation of criminal proceedings is made by the prosecutor, the investigator, the organ of police inquiry, or the judge. The ruling must show the time, the place, the person who made the ruling, the cause and grounds for initiating proceedings, the article of criminal law in accordance with whose provisions it was initiated, and the further routing of the case.

When the decision to instigate criminal proceedings is made by an investigator or an organ of police inquiry, a copy of the decision is immediately sent to the prosecutor.

Simultaneously with the initiation of criminal proceedings, steps shall be taken to prevent or stop the crime and to preserve traces of the crime.

Article 113. Refusal to initiate criminal proceedings.

In the absence of grounds for initiating criminal proceedings, or if there are circumstances ruling out proceedings on the case, the prosecutor, the investigator, the organ of police inquiry, or the judge shall refuse to initiate criminal proceedings.

If the statement or communication received contains information concerning an administrative or disciplinary misdemeanor, or other violation of social order and the rules of socialist communal life, the prosecutor, the investigator, the organ of police inquiry, or the judge shall have the authority to forward the statement or communication for investigation by a social organization, comrades' court, collective of workers, or to transmit the material received for settlement under administrative or disciplinary procedure.

A reasoned decision as to the refusal to initiate criminal proceedings shall be prepared, and notice of this fact shall be furnished to the person, institution, enterprise, or social organization originating the statement or communication, together with an explanation as to the right to appeal this decision.

The deponent may appeal a refusal to initiate criminal proceedings either to the appropriate prosecutor or to the higher court, as the case may be.

Article 114. Transmitting a statement or communication to other investigative or judicial jurisdiction.

The prosecutor, investigator, organization of police inquiry, or judge may transfer a statement or communication he has received, to another investigative or judicial jurisdiction. In this case he must take steps to prevent or stop the crime, and to preserve traces of the crime.

Article 115. The routing of the case after its initiation.

When a ruling has been made as to the instigation of criminal proceedings:

- 1) the prosecutor sends the file on for purpose of preliminary investigation or police inquiry;
- 2) the investigator begins the preliminary investigation, and the organ of police inquiry begins the inquiry;
- 3) the judge sends the file on for purposes of preliminary investigation or police inquiry, or else takes the case for examination by his court.

Article 116. Control by the prosecutor over legality in the initiation of criminal proceedings.

The prosecutor exercises control over legality in the initiation of criminal proceedings.

If proceedings are instigated by an investigator or organ of police inquiry without legal grounds and cause, the prosecutor makes a ruling rescinding the ruling of the investigator or organ of police inquiry and refusing to instigate criminal proceedings, or if investigative actions have already been carried out on the case, he terminates the proceedings.

In the event of an unfounded refusal to initiate proceedings the prosecutor makes a ruling abrogating the decision to this effect made by the investigator or organ of police inquiry, and instigates proceedings.

Chapter Nine

The Police Inquiry

Article 117. Organs of police inquiry.

The following are organs of police inquiry:

- 1) organs of the police;
- 2) commanding officers of military units and formations, and officers in charge of military institutions -- with respect to all cases of crimes committed by military personnel under their command, and by persons subject to military service while assembled for training purposes; with respect cases involving crimes committed by salaried workers and employees of the armed forces in connection with the performance of official duties or at the location of the unit, formation, or institution;
- 3) organs of state security -- with respect to cases placed under their jurisdiction by the law;
- 4) heads of corrective labor institutions -- with respect to cases involving crimes against the established procedure for the performance of duties committed by staff members of such institutions, and with respect to cases involving crimes committed at the location of corrective labor institutions;
- 5) organs of state fire inspection -- with respect to cases involving fires and violations of fire-prevention regulations;
- 6) organs of border protection -- with respect to cases involving violations of the state border;

7) masters of seagoing vessels when on long voyages, and superintendents of wintering stations during the period when there are no transportation connections with the wintering station.

Article 118. The obligations of organs of police inquiry.

Organs of police inquiry are responsible for taking the necessary operative-search measures and other criminal procedural measures prescribed by law in order to discover crimes and the persons who have committed them.

Organs of police inquiry are also responsible for taking all steps necessary to prevent and stop crimes.

The activity of organs of police inquiry varies depending upon whether they are acting on cases with respect to which a preliminary investigation is mandatory or cases with respect to which a preliminary investigation is not mandatory.

Article 119. The activity of organs of police inquiry in cases with respect to which a preliminary investigation is mandatory.

If there exist the indicia of a crime with respect to which a preliminary investigation is mandatory, the organ of police inquiry instigates criminal proceedings and, guided by the rules of criminal procedural law, carries out immediate investigative actions to establish and preserve the traces of the crime: inspection, search, seizure, examination, detention and interrogation of suspects, and interrogation of injured parties and witnesses.

The organ of police inquiry immediately notifies the prosecutor as to the discovery of the crime and the beginning of the inquiry.

Upon completion of the immediate investigative actions the organ of police inquiry is required, without waiting for instructions from the prosecutor or expiration of the period specified in Article 121 (first part) of the present Code, to transfer the case to the investigator.

After transferring the case to the investigator the organ of police inquiry may carry out investigative and search actions on the case only upon instruction from the investigator. In the event of the transfer to the investigator of a case in which it has been impossible to discover the person who committed the crime, the organ of police inquiry shall continue to carry out operative search measures in order to find the criminal, informing the investigator of the results.

Article 120. The activity of organs of police inquiry in cases with respect to which a preliminary investigation is not mandatory.

With respect to cases for which a preliminary investigation is not mandatory, the organ of police inquiry instigates proceedings and takes all of the criminal procedural steps prescribed by law in order to establish those circumstances subject to proof in a criminal case.

In conducting an inquiry on a case with respect to which a preliminary investigation is not mandatory, the organ of police inquiry shall be guided by the rules established by the present Code for preliminary investigation, with the following exceptions:

- 1) defense counsel does not participate in the conduct of the inquiry;
 - 2) the injured party, civil plaintiff, civil defendant, and their representatives are notified of the completion of the inquiry and the fact that the file has been forwarded to the prosecutor, but the materials are not made available for their inspection;
 - 3) the rules established by Article 127 (second part) of the present Code shall not be applied to organs of police inquiry.
- In the event of disagreement with the instructions of the prosecutor the organ of police inquiry shall have the right to appeal them to the higher prosecutor, without however suspending the carrying out of such instructions.

In cases with respect to which a preliminary investigation is not mandatory, the materials of the police inquiry constitute the basis for hearing the case in court.

Article 121. The time limit for carrying out the police inquiry.

In cases with respect to which a preliminary investigation is mandatory, the police inquiry shall be completed no later than ten days from the time the proceedings were initiated.

In cases with respect to which a preliminary investigation is not mandatory, the police inquiry shall be completed no later than one month from the time the proceedings were initiated, including in this period the drawing up of the indictment or of the ruling as to the termination or suspension of the proceedings.

The time limit for the police inquiry fixed by the second part of the present article may be extended by the prosecutor directly exercising control over the police inquiry, but for no more than one month.

In exceptional cases the time limit for completing the police inquiry on a case may be extended in accordance with the rules established by Article 133 of the present Code.

Article 122. The detention of a person suspected of having committed a crime.

The organ of police inquiry shall have the right to detain a person suspected of having committed a crime punishable by deprivation of freedom only when one of the following circumstances is present:

- 1) when the person was apprehended in flagrante delicto or immediately after committing the crime;
- 2) when witnesses, including the injured party, directly identify the person as the one who committed the crime;
- 3) when evidence of the crime is found on the suspect, on his clothing, near him, or in his home.

If there is other evidence providing grounds for suspicion of commission of the crime, the person may be detained only provided that he attempted to flee, or that he has no permanent home, or when the identity of the suspect has not been established.

In any case of detaining a person suspected of having committed a crime, the organ of police inquiry shall prepare a record showing the grounds and reasons for detention and inform the prosecutor of this fact within 24 hours. Within 48 hours from the time of receiving the notification of detention, the prosecutor shall either give his permission for confinement under guard or release the prisoner.

Article 123. Summoning and interrogating the suspect.

The suspect is summoned and interrogated in accordance with the rules established by articles 145-147 and 150-152 of the present Code.

Prior to interrogation the suspect must be informed of his rights as specified in Article 52 of the present Code. He must be informed as to the crime of which he is suspected, and a notation to this effect shall be entered in the record of his interrogation.

If the suspect has been detained, or if a measure of restraint in the form of confinement under guard has been carried out with respect to him, the interrogation shall be conducted immediately. However, if it is not feasible to conduct the interrogation immediately, the suspect shall be interrogated no later than 24 hours from the moment of detention.

Article 124. The completion or suspension of the police inquiry.

The police inquiry on a case with respect to which preliminary investigation is mandatory concludes with the preparation of a ruling as to forwarding the case to the investigator.

A police inquiry on a case with respect to which a preliminary investigation is not mandatory concludes with the preparation of an indictment or a ruling as to termination of the proceedings. If one of the circumstances enumerated in Article 208 of the present Code is found to be present, the organ of police inquiry terminates the proceedings by a reasoned decision a copy of which is sent to the prosecutor within 24 hours. In all other cases an indictment is drawn up and submitted to the prosecutor for approval, together with all materials on the inquiry.

If one of the circumstances enumerated in Article 195 of the present Code is found to be present, the organ of police inquiry shall have the right to suspend proceedings on a case with respect to which preliminary investigation is not mandatory. The organ of police inquiry makes a ruling as to suspending proceedings, a copy of which is sent to the prosecutor within 24 hours.

Chapter Ten

General Conditions Governing the Preliminary Investigation

Article 125. Organs of preliminary investigation.

The preliminary investigation of criminal cases is conducted by investigators of the Prosecutor's Office, and also by investigators of organs of state security with respect to crimes enumerated in articles 64-70, 72, 73, and 79 of the Criminal Code RSFSR.

Article 126. Obligations of the preliminary investigation.

A preliminary investigation is mandatory for cases involving crimes enumerated in articles 64-88, 89 (second and third parts), 90 (second and third parts), 91, 92, 93 (second and third parts), 95, 98 (second part), 99, 102-111, 114-121, 124-129, 130 (second and third parts), 132-143, 145 (second and third parts), 146, 147 (second and third parts), 148, 149 (second part), 150-153, 154 (second part), 155, 156 (second part), 157, 159, 160, 161, 162 (second part), 164, 170-181, 183, 184, 189-193, 195 (second part), 202-205, 210, 211 (second part), 212 (second part), 213-216, 221, 226, 231-269 of the Criminal Code RSFSR, and also for all cases

involving crimes committed by minors or persons who because of physical or mental disability cannot personally exercise their right to defense.

In cases other than those enumerated supra, a preliminary investigation is conducted only in those cases where such is deemed necessary by the court or the prosecutor.

Article 127. The powers of the investigator.

In conducting the preliminary investigation, all decisions as to the course of the investigation and the performance of investigative actions are taken independently by the investigator except for those cases where the law provides that the permission of the prosecutor shall be obtained, and the former bears full responsibility for taking such decisions legally and promptly.

In the event of disagreement on the part of the investigator with the instructions of the prosecutor concerning the prosecution of the accused, or the forwarding of the case for the arraignment of the accused or the termination of the proceedings, the investigator shall have the right to submit the case to the higher prosecutor with a written statement of his objections. In this case the prosecutor either rescinds the instructions of the lower prosecutor or assigns another investigator to conduct the investigation.

In cases with respect to which a preliminary investigation is mandatory, the investigator shall have the right to begin the preliminary investigation at any time, without waiting for the organ of police inquiry to perform the actions enumerated in Article 119 of the present Code.

With respect to the cases he is investigating, the investigator shall have the right to issue instructions and commissions to the organs of police inquiry concerning the conduct of search and investigative actions, and to require cooperation from organs of police inquiry in carrying out particular investigative actions. These instructions and commissions of the investigator are conveyed in writing, and are binding upon organs of police inquiry.

Rulings of the investigator made in accordance with the law on criminal cases which he is investigating are binding upon all institutions, enterprises, organizations, officials, and citizens.

The investigator shall have the right to detain and interrogate a person suspected of a crime in accordance with the procedure, and

on the grounds, specified in articles 122 and 123 of the present Code.

Article 128. Enlisting the participation of the public in the discovery of crimes.

In pursuing his investigation, the investigator shall make extensive utilization of assistance from the public in discovering crimes and seeking out the persons who committed them, and also in ascertaining and establishing the causes and conditions facilitating the commission of crimes.

Article 129. Starting the preliminary investigation.

A preliminary investigation may be started only after the initiation of criminal proceedings under the procedure established by the present Code.

The investigator shall immediately begin the investigation of a case initiated by himself or transferred to him. If the criminal proceedings have been initiated by the investigator and if he is handling the case himself, he prepares a single ruling as to initiating the proceedings and accepting the case. If he has accepted a case initiated by the prosecutor or the court, the investigator makes a separate ruling as to his acceptance of the case. The investigator shall forward copies of these rulings to the prosecutor within 24 hours.

If the case is complex or of great volume, the preliminary investigation may be assigned to several investigators. This fact will be stated in the decision on initiating the proceedings, or else a separate ruling will be made. One of the investigators takes the case and directs the work of the other investigators. In this case, the identity of the entire staff of prosecutors is made known to the suspect, the accused person, the injured party, the civil plaintiff, or the civil defendant when he is being informed as to his right to challenge.

Article 130. The procedure for settling a challenge to the investigator.

An investigator who has received a challenge shall forward it to the prosecutor, together with his own explanations, within 24 hours. If the grounds enumerated in Article 64 of the present Code are found to be present, the investigator is required to address to the prosecutor a statement disqualifying himself from conducting the preliminary investigation on the case in question.

The prosecutor is required to make his decision within three days from the time of receipt of the statement. Investigative actions are not suspended pending decision by the prosecutor.

Article 131. The obligation to satisfy petitions relevant to the case.

The investigator shall not be authorized to refuse to a suspect, accused person and his defense counsel, or to an injured party, civil plaintiff, civil defendant, or their representatives, the right to question witnesses, conduct expert examinations, and other investigative activities by way of gathering evidence if the circumstances for whose establishment they are petitioning are relevant to the case. Circumstances relevant to the case are those enumerated in articles 20, 21, and 68 of the present Code, and all other circumstances whose establishment has a bearing upon the correct investigation of the case.

The results of the consideration of a petition are communicated to the petitioner. If a petition is rejected in whole or in part, the investigator shall make a ruling setting forth the reasons for the rejection.

Article 132. The place where the preliminary investigation is conducted.

The preliminary investigation is conducted in the same area where the crime was committed. For purposes of assuring a maximum of rapidity, objectivity, and thoroughness of investigation it may be conducted at the place where the crime was discovered, or at the place where the suspect, the accused person, or the majority of the witnesses are located.

If the investigator ascertains that the case in question is not under his investigative jurisdiction, he is required to carry out all immediate investigative actions, after which he forwards the file to the prosecutor for routing to the proper investigative jurisdiction. The question as to the investigative jurisdiction of a case is decided by the prosecutor at the place where the investigation was started.

If it is necessary to carry out investigative or search measures in another area, the investigator shall have the authority to conduct such measures personally or to assign the conduct of these measures to the appropriate investigator or organ of police inquiry, which shall be required to carry out this commission within a period not to exceed ten days.

Article 133. The time limit for the preliminary investigation.

The preliminary investigation of a criminal case shall be completed within a period of not more than two months.

This period shall include the time from the day when proceedings were initiated until the moment when the case is forwarded to the prosecutor with an indictment, or with a decision to transfer the case to court for purposes of considering the question of applying compulsory measures of a medical character, or until the termination or suspension of proceedings on the case.

The time limits for the preliminary investigation fixed in the first part of the present article may be extended by the prosecutor of an autonomous republic, kray, oblast, autonomous oblast, or national okrug, or by the military prosecutor of a military district or fleet of the navy, but for not more than two months. Further extension of the time limit for the preliminary investigation may be effected only in exceptional cases by the Prosecutor RSFSR, the Chief Military Prosecutor, or the General Prosecutor USSR.

When a case is returned by the court for additional investigation, or in case of the resumption of a suspended or terminated case, the time limit for the additional investigation is fixed by the prosecutor supervising the investigation within limits of one month from the time the case was taken for investigation. Further extension of the limit is effected in accordance with general principles.

When it is necessary to extend the time limit for the investigation, the investigator is required to prepare a reasoned ruling to this effect and submit it to the appropriate prosecutor prior to expiration of the time limit for the preliminary investigation.

Article 134. Participation of the interpreter.

In the cases enumerated in articles 17 and 57 of the present Code the investigator engages an interpreter for interrogations and other investigative actions.

Before starting the investigative action in which the interpreter is to participate, the investigator explains to the interpreter his obligations, and warns him of his liability for deliberately false interpretation. A notation to this effect is entered in the record of the corresponding investigative action and attested by the signature of the interpreter.

Article 135. The participation of investigation witnesses.

Investigation witnesses are summoned when conducting inspections, search, seizure, examination, and other investigative

actions in those cases stipulated by the present Code. Not less than two investigation witnesses shall be summoned.

Any citizens who are not interested parties to the proceedings may be summoned as investigation witnesses.

An investigation witness is required to attest the fact, content, and results of the actions in whose conduct he has participated. An investigation witness shall have the right to comment on the conduct of the actions carried out. The comments of the investigation witness shall be entered in the record of the corresponding investigative action.

Prior to starting the investigative action in which investigation witnesses are to participate, the investigator informs the latter as to their rights and obligations.

Article 136. Specification of the injured party.

When he has established that the crime caused moral, physical, or property damage to a citizen, the investigator, acting upon his own initiative or on the basis of a statement from the person in question, makes a ruling specifying the latter as the injured party. The investigator informs the injured party or his representative of the fact that the person in question has been declared the injured party. When the injured party presents himself or when he is being questioned, the investigator informs him of the rights provided by Article 53 of the present Code; and if the injured party is also a civil plaintiff, he informs him as to the rights provided by Article 54 of the present Code. A notation to this effect is made in the record of the questioning, or in the ruling specifying the injured party.

Article 137. Specification of the civil plaintiff.

If the investigator ascertains from the file that the crime has caused material damage to a citizen, institution, enterprise, or organization, he informs them or their representatives of the right to bring a civil action, and prepares a protocol or gives written notice to this effect.

When a civil claim is presented, the investigator is required to make a reasoned ruling as to acknowledgment or rejection of the civil claimant.

The ruling specifying the civil claimant is communicated to the civil claimant or his representative. If the civil plaintiff

or his representative appears in person, the rights provided by Article 54 of the present Code are explained to him, and a notation to this effect is entered in the ruling, which is attested by the signature of the civil claimant or his representative. If there is a ruling refusing to acknowledge the civil claimant, it shall be furnished to the claimant, who shall give a receipt for it.

Article 138. Initiating prosecution of a civil defendant

If the prosecutor has established that material responsibility for the damage caused by the criminal actions of the accused should legally be borne by his parents, foster parents, guardians, or other persons, or by institutions, enterprises, or organizations, he prepares a reasoned decision to prosecute the appropriate person, institution, enterprise, or organization as a civil defendant.

The ruling is communicated to the civil defendant or his representative, and he is informed as to the rights guaranteed by article 55 of the present Code. A notation to this effect is entered in the ruling and attested by the signature of the civil defendant or his representative.

Article 139. The prohibition against publicizing data from the preliminary investigation.

Data from the preliminary investigation may be made public only with the permission of the investigator or the prosecutor and only to that extent which they deem feasible.

Where necessary the investigator warns the witnesses, the injured party, the civil plaintiff, the civil defendant, defense counsel, expert witness, the interpreter, investigation witnesses, and other persons present when investigative actions are carried out as to the prohibition against publicizing data from the preliminary investigation without his permission. The aforementioned persons are required to sign a statement to the effect that they have been warned of their liability under Article 134 of the Criminal Code RSFSR.

Article 140. Measures for eliminating the causes and conditions facilitating the commission of the crime.

When the investigation establishes the causes and conditions facilitating the commission of the crime, the investigator communicates to the appropriate enterprises, institutions, and social organizations his views with respect to taking steps to eliminate these causes and conditions.

The corresponding enterprises, institutions, and social organizations are required, within a period of time not to exceed one month, to consider the views of the investigator and to take the necessary steps and report same to the investigator.

Article 141. The record of the investigative action.

A record of the performance of an investigative action is prepared in the course of the investigative action, or immediately following its completion, by the investigator. The record shows: the place and date of performing the investigative action; the time of its commencement and completion; the position and last name of the person preparing the record; the last name, patronymic, and first name of each person participating in the investigative action, and his address where necessary; the content of the investigative action and the evidence relevant to the case which was discovered when the action was carried out. The record is read by all persons participating in the investigative action, which persons shall be informed of their right to make comments to be entered in the record.

The record is signed by the investigator, the person interrogated, the interpreter, the investigation witnesses, and other persons if they participate in the investigative action.

Photographs, plans, diagrams, molds, and impressions of prints may be appended to the record. In such cases the record shall contain a corresponding reference.

Article 142. Attestation of the fact of refusal to sign, or the impossibility of signing, the record of the investigative action.

If an accused person, suspect, witness, or other person refuses to sign the record of the investigative action, a notation to this effect is entered in the record and attested by the signature of the person carrying out the investigative action.

Persons who have refused to sign the record shall be accorded the possibility of giving an explanation of the reasons for the refusal, which are made a part of the record.

If by reason of physical handicaps one of the persons enumerated in the first part of the present article is unable to sign the record of the investigative action, a notation to this effect is entered in the record and attested by the signature of the investigator and the investigation witnesses.

If for the same reasons an accused person, a suspect, a witness, or an injured party is unable to sign the record, the investigator shall call in a third party who, with the agreement of the person who has been interrogated, attests with his signature the correctness of the recording of the latter's depositions. This record is also signed by the investigator conducting the interrogation.

Chapter Eleven

Presentation of the Charges and Interrogation of the Accused

Article 143. Initiating the prosecution of the accused.

If there is sufficient evidence to provide grounds for charging a person with the commission of a crime, the investigator makes a reasoned decision to begin prosecution of the accused.

Article 144. The decision to begin prosecution of the accused.

The decision to begin prosecution of the accused must show: the time and place its preparation; the name of the person who prepared it; the last name, first name, and patronymic of the person named as the accused; the crime with which the person in question is charged; the time, place, and other circumstances of the commission of the crime, insofar as they have been established by the materials on the case; and the criminal statute covering the crime in question.

If the accused is charged with the commission of several crimes coming under different articles of criminal law, the decision to begin prosecution of the accused shall show which specific acts the accused is charged with under each of the articles of criminal law.

Article 145. The procedure for summoning the accused.

If the accused is at liberty he is summoned to appear before the investigator by means of a process served on the accused, for which he must sign a receipt showing the time of service. A summons may also be delivered via telephone or telegram.

The summons must specify who is being summoned as the accused, where and before whom he must appear, and day and hour when he is to appear, and the consequences of failing to appear.

In the event of the temporary absence of the accused, the summons is delivered to an adult member of his family domiciled with him, to the apartment house administration office, the administration office at his place of employment, or the executive committee of a rural or settlement soviet of workers' deputies, and a receipt obtained for it.

An accused person under detention is summoned through the administration of the place of confinement.

Article 146. The requirement that the accused appear.

An accused person is required to appear in answer to the summons of the investigator, at the appointed time.

The following constitute good and sufficient reason for the failure of the accused to appear in answer to a summons:

- 1) Illness making it impossible for the accused to appear;
- 2) The fact that the accused did not receive the summons in time;
- 3) Other circumstances making it impossible for the accused to appear at the appointed time.

Article 147. Temporary arrest of the accused.

In the event that the accused fails to appear without good and sufficient reason, he may be subjected to temporary arrest.

Temporary arrest of the accused without prior summons may be employed only in those cases where the accused has concealed himself from the investigation or does not have any permanent place of residence.

Temporary arrests shall not be made at night, except for those cases not permitting of a delay.

When a temporary arrest is to be made, the investigator makes a ruling to that effect, which is communicated to the accused.

Upon instructions from the investigator, the temporary arrest is effected by the police.

Article 148. Presenting the charges.

Charges must be presented not less than two days from the time of making the decision to prosecute a person as the accused, and in

the case of temporary arrest, they must be presented on the day of the arrest.

Charges may be preferred upon expiration of the two-day period in those cases where the location of the accused is not known, or if he has not appeared in answer to summons by the investigator.

When the investigator has satisfied himself as to the identity of the accused, he communicates to him the decision to prosecute him as the accused, and explains the nature of the charges which have been brought. The fact that these actions have been performed is attested by the signature of the accused on the decision to prosecute him as the accused, and by the signature of the investigator; and the time of presentation of the charges is indicated.

If the accused refuses to sign, the investigator certifies by a notation on the decision to bring charges that the text of the decision has been communicated to the accused.

Article 149. Explaining to the accused his rights at the preliminary investigation.

When presenting the charges the investigator is required to explain to the accused the rights provided by Article 46 of the present Code, and a notation to this effect is entered in the decision to prosecute the accused, and attested by the signature of the accused.

Article 150. The procedure for interrogating the accused.

The investigator is required to interrogate the accused immediately after the presentation of charges.

The accused shall not be interrogated at night, except in those cases not permitting of a delay.

The accused is interrogated at the place where the preliminary investigation is being conducted. The investigator shall have the right, if he deems it necessary, to conduct the interrogation at the place where the accused is located.

Accused persons summoned with respect to the same case shall be interrogated separately; and the investigator shall take steps to see that they are unable to make contact with one another.

In beginning the interrogation, the investigator shall ask the

accused whether he pleads guilty to the charge preferred against him, after which he suggests that the accused make depositions on the substance of the charge. The investigator listens to the depositions of the accused and then, where necessary, questions him.

Article 151. The record of the interrogation of the accused.

For each interrogation of the accused, the investigator prepares a record in accordance with the requirements of articles 141 and 142 of the present Code. The record of the interrogation shall show the data on the identity of the accused, including: last name, first name, and patronymic; date and place of birth; citizenship; nationality; education; family situation; place of employment, kind of work, or position; domicile; previous convictions; and other information which proves necessary in accordance with the circumstances of the case.

The depositions of the accused shall be entered in the record in the first person and verbatim, insofar as possible. The questions put to the accused, and his answers, are recorded where necessary.

Upon completion of the interrogation the record is made available to the accused so that he may read it or, at his request, it is read by the investigator. The accused shall have the right to demand additions to, and corrections in, the record. These additions and corrections shall mandatorily be entered in the record.

When the accused has read the record, he attests with his signature to the fact that it was correctly taken down. A notation is made above the signature of the accused as to whether he read the record himself or whether it was read to him by the investigator.

If the record comprises several pages, the accused signs each page separately. All additions to, and corrections in, the record must be attested by the signature of the accused and the investigator.

If the interrogation is conducted with the participation of an interpreter, the record of the interrogation shall include a notation to the effect that the interpreter was informed as to his obligations and warned of his liability for deliberately false interpretation, which notation is attested by the signature of the interpreter. The record shall also contain a notation to the effect that the accused was informed of his right to challenge the interpreter, and any statements made in this connection by the accused.

The interpreter shall sign each page of the record and the record

as a whole. By means of his signature at the end of the record the accused certifies that the interpretation of the record given to him corresponds to his own depositions. If the record of the interrogation has been translated into another language in writing, the translation as a whole, and each page thereof, shall be signed by the translator and the accused.

Article 152. The transcription, by the accused, of his own depositions in his own handwriting.

If the accused so requests, he shall be allowed, after giving his depositions, to transcribe them in his own handwriting, and a notation to this effect shall be entered in the record. The depositions are signed by the accused and the investigator.

The investigator shall have the right, after having familiarized himself with the written depositions of the accused, to put additional questions to him. These questions, and the answers thereto, shall be entered in the record. The correctness with which the questions and answers have been recorded shall be attested by the signatures of the accused and the investigator.

Article 153. Removal from position.

When the investigator is initiating the prosecution of an official as the accused and it is necessary to remove the accused from his position, a reasoned decision to this effect is prepared and must be approved by the prosecutor. The decision is sent for compliance to the place of employment of the accused.

When there ceases to be any necessity for employing this measure, the removal from position is rescinded by an order of the investigator.

Article 154. Changes in, and additions to, the charges.

If in the course of conducting the preliminary investigation there occur grounds for changing the charges or making additions to them, the investigator shall prefer new charges against the accused in accordance with the requirements of articles 143, 144, and 148 of the present Code, and interrogate the accused on the basis of the new charges.

If in the course of the preliminary investigation the charges fall of confirmation in any part, the investigator makes a ruling to terminate proceedings with respect to that part, and notifies the accused accordingly.

Chapter Twelve

Interrogation of Witnesses and of the Injured Party

Article 155. The procedure for summoning a witness.

Witnesses are summoned to appear before the investigator by means of a summons served on the witness or, in his temporary absence, on an adult member of his family, the apartment house administration office, the administration office at his place of employment, or the executive committee of a rural or settlement soviet of workers' deputies, and a receipt obtained for it. The summons must specify: who is being summoned as a witness; where and before whom he is to appear; the date and hour of his appearance; and the consequences of a failure to appear. Witnesses may also be summoned by telephone message or telegram.

Article 156. The procedure for summoning a witness below the age of sixteen years.

A witness who is below the age of 16 years shall be summoned through his parents or legal representatives. Another procedure is permissible only when necessitated by the circumstances of the case.

Article 157. The place of interrogation of witnesses.

Witnesses summoned in connection with the same case are questioned separately and in the absence of other witnesses. Also, the investigator shall take steps to assure that witnesses on the same case cannot make contact with each other.

Before questioning a witness the investigator satisfies himself as to the identity of the witness and informs him as to his obligations and liability for the refusal or avoidance of making depositions, and for deliberately false testimony, and a notation to this effect is entered in the record and attested by the signature of the investigator.

At the outset of the questioning the investigator establishes the relationship of the witness to the accused and the injured party, and clarifies other necessary information as to the identity of the person being questioned.

Interrogation on the substance of the case begins with a

suggestion to the witness that he tell everything he knows about the circumstances in connection with which he has been summoned. After the deposition of the witness, the investigator may question him. Leading questions are not permitted.

Article 159. Questioning a witness who is a minor.

When questioning a witness under 14 years of age, and also, at the discretion of the investigator, when questioning a witness between the age of 14 and 15 years, a teacher is summoned to be present. The legal representatives of a minor witness, and also his near relatives, are summoned where necessary.

Before questioning is begun these persons are informed as to their rights and obligations, and a notation to this effect is made in the record.

The above-mentioned persons shall be present during the questioning and may, with the permission of the investigator, question the witness themselves. The investigator shall have the right to rule out a question which has been asked, but the question which has been ruled out must be entered in the record. Upon completion of the interrogation the persons who have been present attest by their signatures to the fact that the depositions have been correctly recorded.

Article 160. The record of the interrogation of a witness.

A record of the interrogation of a witness is prepared in accordance with the requirements of articles 141, 142, and 159 of the present Code.

The depositions of the witness are recorded in the first person and verbatim, insofar as possible. The questions put to the witness, and his answers, are recorded where necessary.

Upon completion of questioning the record is made available to the witness so that he can read it or, at his request, it is read to him by the investigator. The witness shall have the right to demand additions to, and corrections in, the record. These additions and corrections shall mandatorily be entered in the record. When he has read the record the witness certifies that the depositions were correctly recorded, and a notation to this effect is made in the record and attested by the signature of the witness. Above the signature of the witness another notation is entered as to whether the witness read the record himself or whether it was read to him by the investigator. If the record comprises several pages, the witness

shall sign each individual page.

If the witness so requests he shall, after giving his testimony, be permitted to transcribe his own depositions in his own handwriting, and a notation to this effect is entered in the record of the interrogation. The depositions are signed by the witness and the investigator.

If the interrogation is conducted with the participation of an interpreter, the record of the interrogation is prepared in accordance with the rules set forth in Article 151 of the present Code.

Article 161. Summoning and interrogating the injured party.

The rules of articles 155-160 of the present Code apply with respect to summoning the injured party, interrogating him, and preparing the record of the interrogation.

Chapter Thirteen

Confrontation of Witnesses; Presentation for Identification

Article 162. Confrontation of Witnesses.

The investigator shall have the right to effect confrontation between two previously questioned persons in whose testimony there are substantial contradictions.

Article 163. The procedure for confrontation of witnesses.

If the confrontation is effected between a witness and the injured party, they are warned, prior to questioning, of their liability for refusal or avoidance of making depositions and for deliberately false testimony, and a corresponding notation is made in the record.

In beginning his questioning at the confrontation, the investigator asks the persons between whom the confrontation is being effected whether they know each other and what relations exist between them. Then the above persons are requested, in turn, to make depositions on those circumstances for whose clarification the confrontation is being effected. After the testimony, the investigator shall have the right to ask questions of each of the witnesses. With the permission of the investigator, the persons between the confrontation has been effected may cross-examine each other, and a notation to this fact is made in the record.

Disclosure of the testimony given by the participants in a confrontation at previous interrogations is permitted only after they have testified at the confrontation, and their testimony has been recorded.

The depositions made at the confrontation are recorded in the order in which they are given. Each witness at the confrontation signs his depositions and each page individually.

Article 164. Presentation for identification.

Where necessary the investigator may present a person or an object, for purposes of identification, to a witness, the injured party, a suspect, or an accused person.

The persons making the identification are previously questioned as to the circumstances under which they observed the person or object in question, and as to the distinguishing marks or characteristics on the basis of which they can make the identification.

Article 165. The procedure for presentation for identification.

The person who is to be identified is presented to the person making the identification together with other persons who, insofar as possible, resemble the person to be identified. The total number of persons presented for identification shall be not less than three. This rule does not apply to the identification of a corpse.

Before the presentation is begun, the person to be identified is requested to take any place he chooses among the other persons in the line-up, and a notation to this fact is made in the record.

If presentation of an individual is impossible, the identification may be made on the basis of a photograph of the person in question presented together with other photographs not less than three in number.

An object is presented in a group of similar objects.

If the person making the identification is a witness or the injured party, he is warned beforehand of his liability for refusal or avoidance of making depositions and for deliberately false testimony, and a notation to this effect is entered in the record.

The person making the identification is requested to point out the person or object concerning which he has given testimony. Leading questions are prohibited.

If the person making the identification points out one of the persons or objects presented, he is requested to explain on the basis of what distinguishing marks or characteristics he has recognized the person or object in question.

Presentation for identification is effected in the presence of investigation witnesses.

Article 166. The record of a presentation for identification.

A record of the presentation for identification is prepared in accordance with the requirements of articles 141 and 142 of the present Code. The record gives information on the identity of the person making the identification, the persons and objects presented for identification, and insofar as possible a verbatim transcription of the depositions of the person making the identification.

Chapter Fourteen

Seizure, Search, and the Sequestration of Property

Article 167. The grounds for effecting seizure.

Where it is necessary to impound certain objects and documents relevant to the case, and if their location is accurately known, the investigator effects seizure.

The seizure of documents containing information which constitutes a state secret is effected only with the permission of the prosecutor and under a procedure to which the head of the institution in question has agreed.

Seizure is effected on the basis of a reasoned ruling by the investigator.

Article 168. The grounds for search.

If the investigator has good grounds for assuming that weapons of the crime, objects and valuables acquired by criminal means, or other objects or documents of possible relevance to the case are to be

found in a building, or other place, or in the possession of an individual, he conducts a search in order to discover and impound them.

A search may also be conducted to discover persons who are being sought, or corpses.

Search is conducted on the basis of a reasoned ruling made by the investigator and only with the permission of the prosecutor. In cases not admitting of delay, search may be conducted without the permission of the prosecutor; but in this case the prosecutor shall be informed, within one day, of the fact that a search has been made.

Article 169. Persons present when seizure or search is carried out.

The presence of investigation witnesses is mandatory when search or seizure is being carried out.

The presence of the person at whose home the search or seizure is being effected, or of adult members of the family, shall be assured when search or seizure is effected. If it is not possible for such persons to be present, representatives of the apartment house administration office or of the executive committee of a rural or settlement soviet of workers' deputies shall be called in.

Search or seizure in buildings occupied by institutions, enterprises, organizations, is effected in the presence of a representative of the institution, enterprise, or organization in question.

Persons at whose homes search or seizure is being effected, investigation witnesses, and representatives shall be informed as to their right to be present at all actions of the investigator, and to make statements with respect to the performance of such actions, which statements shall be entered in the record.

Article 170. The procedure for effecting search or seizure.

Search or seizure shall not be effected at night, except for cases not permitting of a delay. When undertaking search or seizure, the investigator is required to present a ruling to this effect.

When effecting seizure after presentation of a ruling, the investigator requests that the objects or documents to be impounded be turned over to him. In the event of a refusal to do so, he

effects the seizure compulsorily.

In conducting a search after presentation of a ruling, the investigator requests that the weapons of the crime, objects and valuables acquired by criminal means, and other objects or documents which may be relevant to the case, be turned over to him. If they are turned over voluntarily and there are no grounds for apprehension of the concealment of the objects and documents being sought, the investigator shall have the right to confine himself to impounding whatever has been turned over to him without conducting further search.

In effecting search and seizure the investigator shall have the right to open locked rooms and storage spaces if the owner has refused to open them voluntarily. In this case the investigator shall avoid any damaging of locks, doors, and other objects which is not strictly necessary.

The investigator is required to take steps to avoid public disclosure of circumstances of the intimate life of the person occupying the premises in question, or other persons, which circumstances were brought to light in the course of search or seizure.

The investigator shall have the right to prohibit persons on the premises or place where search is being conducted, and persons coming to the premises or place, from leaving it, and also from communicating with one another or with other persons pending completion of the search.

Article 171.. Impounding objects and documents when effecting search and seizure.

When carrying out seizure and search the investigator shall confine himself strictly to the impounding of those objects and documents of possible relevance to the case. Objects and documents whose possession and use is illegal shall be removed regardless of their relevance to the case.

All objects and documents removed are shown to the investigation witnesses and other persons present, and where necessary are packed and sealed on premises where the search or seizure was effected.

Article 172. Personal search.

Personal search is conducted in accordance with the rules of

articles 167-171 of the present Code.

Personal search may be conducted without making an individual ruling to that effect, and without the permission of the prosecutor:

- 1) when a person is being detained or confined under guard;
- 2) when there are sufficient grounds for assuming that a person on the premises or other place where seizure or search is being effected is concealing upon his person objects or documents of possible relevance to the case.

Personal search may be conducted only by a person of the same sex as the person being searched, and in the presence of investigation witnesses of the same sex.

Article 173. Effecting search and seizure at the quarters of diplomatic representatives.

Seizure and search at quarters occupied by diplomatic representatives or at quarters occupied by diplomatic representatives and their families as a residence may be effected only at the request of, or by agreement with, the diplomatic representative. Agreement of the diplomatic representative to seizure or search is requested through the Ministry of Foreign Affairs.

The presence of the prosecutor and of a representative of the Ministry of Foreign Affairs is obligatory when effecting seizure or search at such quarters.

Article 174. Seizing postal and telegraphic correspondence.

The impounding of correspondence and its seizure at postal and telegraphic institutions may be effected only with the permission of the prosecutor or in accordance with a decision or ruling of a court.

Where it is necessary to impound correspondence and effect its examination and seizure, the investigator makes a reasoned ruling to this effect. After approval by the prosecutor, the investigator forwards the ruling to the appropriate postal or telegraphic institution requesting that the correspondence be held and giving notice of the time of his arrival to examine and seize the correspondence which has been held. Examination and seizure are effected in the presence of workers of the postal or telegraphic institution serving as investigation witnesses.

The order to impound correspondence is rescinded by a ruling of the investigator when there is no longer any necessity for employing this measure.

Article 175. The sequestration of property.

With a view to securing a civil claim or possible confiscation of property, the investigator is required to sequester the property of an accused person, suspect, or those persons materially responsible under the law for the actions of the former, or other persons in possession of property acquired by criminal means.

Sequestration of property may be affected simultaneously with seizure or search, or separately.

With respect to the sequestration of property the investigator prepares a reasoned ruling. The property being sequestered is described in accordance with the rules of articles 169 and 170 of the present Code. All of the property described shall be shown to the investigation witnesses and other persons present.

Sequestration shall not be applied to property required by the accused himself or persons dependent upon him. A list of those objects has been established by legislature of the RSFSR.

At the discretion of the investigator, the property which has been sequestered is conveyed for custody to a representative of the executive committee of the rural or settlement soviet of workers' deputies, or the apartment house administration office, or to the owner of the property, or his relative, or to another persons, who shall be informed as to his liability for safeguarding the property, in acknowledgment of which his signature is obtained. Where necessary the property which has been sequestered may be impounded.

When deposits of money are sequestered, all operations with respect to them are suspended.

Sequestration of property is rescinded by a ruling of the investigator if it is no longer necessary to employ this measure.

Article 176. The record of seizure, search, and sequestration of property.

The investigator prepares a record of seizure, search, or sequestration of property in accordance with the requirements of articles 141 and 142 of the present Code. If in addition to the record a special inventory has been prepared of the objects and

documents impounded or conveyed for special custody, the inventory is appended to the record. The record of seizure, search, or sequestration of property must show that the persons present were informed as to the rights provided by Article 169 of the present Code, and the statements made by them.

With respect to objects and documents subject to impounding, the record must show whether they were turned over voluntarily or taken by force, and at what precise place and under what circumstances they were discovered. All impounded objects and documents, and all property described, shall be listed in the record or the inventory appended to the record, with accurate specification of the amount, dimensions, weight, or individual distinguishing marks, and value insofar as possible.

If in the course of seizing, inventorying, or sequestering property there occurred attempts to destroy or conceal objects and documents, or instances of a violation of order on the part of persons beings search or other persons, the record shall contain a statement to that effect and shall show the measures taken by the investigator.

Article 177. The obligation to furnish a copy of the record.

A copy of the record is furnished to the person at whose home the seizure, search, or sequestration of property was effected, or to adult members of his family, or, in their absence, to a representative of the executive committee of the rural or settlement soviet of workers' deputies, or of the apartment house administration office, and is receipted for.

If the seizure, search, or sequestration of property has been carried out on premises belonging to an institution, enterprise, or organization, a copy of the record is furnished to the appropriate official and a receipt obtained therefor.

Chapter Fifteen

Inspection and Physical Examination

Article 178. The grounds for making an inspection.

The investigator inspects the locus of the event, the area, rooms, objects, and documents with a view to discovering evidence of the crime and other material evidence, clarifying the circumstances of the event and other circumstances relevant to the case.

Article 179. The procedure for making an inspection.

Inspections are made in the presence of investigation witnesses.

The investigator shall have the right to cause an accused person, suspect, injured party, or witness to participate in the inspection.

Where necessary, the investigator may call in an appropriate specialist with no interest in the outcome of the case, to participate in the inspection.

The inspection of objects and documents discovered in the course of search and seizure, and the inspection of the locus of the event, the area, and the premises are made by the investigator at the place where the corresponding investigative action is carried out. In this case the results of the inspection are entered in the record of the investigative action in question. If the inspection of the objects or documents required additional time, or if there are other reasons for doing so, the investigator makes the inspection at the place where the investigation is being carried out. Where necessary the impounded objects are packed and sealed.

The inspection of postal-telegraphic correspondence is made in accordance with the rules of Articles 174 of the present Code.

Article 180. Inspection of a corpse.

The external inspection of a corpse is made by the investigator at the place of its discovery in the presence of investigation witnesses and with the participation of a forensic medical expert or, in his absence, of another physician.

If it is necessary to exhume a corpse from its place of burial the investigator makes a ruling to this effect. Exhumation of the corpse is effected in the presence of the investigator, a forensic medical expert, and investigation witnesses.

Article 181. Physical examination.

The investigator shall have the right to make a physical examination of an accused person, suspect, witness, or injured party in order to establish the presence on this person of evidence of the crime or other special marks, provided that expert forensic medical examination is not required for this purpose.

The investigator makes a ruling with respect to making the physical examination. A ruling for the making of a physical

examination is binding upon the person with respect to whom it was made.

The physical examination is made in the presence of investigation witnesses and, where necessary, of a physician.

In those cases when this investigative action requires removal of the clothing of the person being examined, the physical examination is made in the presence of investigation witnesses of the same sex.

The investigator shall not be present at the physical examination of a person of the other sex if the physical examination involves removal of that person's clothing. In this case the examination is made by a physician in the presence of investigation witnesses.

Acts prejudicial to the dignity of the person being examined, or dangerous to his health, are not permitted when a physical examination is being made.

Article 182. The record of the inspection and physical examination.

A record of inspection and physical examination is prepared by the investigator in accordance with the requirements of articles 141 and 142 of the present Code.

The record describes all of the actions of the investigator, and all that was discovered in the course of the inspection and physical examination, in the sequence in which the inspection was made and in the form in which the things discovered were observed at the time of inspection or physical examination. The record also lists and describes everything impounded at the time of the inspection or physical examination.

Article 183. The investigative experiment.

With a view to verifying and adjusting data relevant to the case the investigator shall have the right to carry out an investigative experiment by means of reproducing the actions, the setting, or other circumstances of a specific event, and performing experimental actions. In this connection, where necessary, the investigator takes measurements and photographs and draws up plans and diagrams.

The carrying out of an investigative experiment is permissible provided it does not prejudice the dignity and honor of the persons participating in, or witnessing, it, and that it does not create dangers to their health.

Investigation witnesses shall be present when the investigative experiment is carried out. Where necessary, a suspect, accused person, injured party, or witness may participate in the experiment. The investigator shall have the right to call in a specialist with not interest in the outcome of the case to participate in carrying out the investigative experiment.

A record of the conduct of the investigative experiment is prepared in accordance with the requirements of articles 141 and 142 of the present Code. The record shall set forth in detail the conditions, course, and results of the investigative experiment conducted.

Chapter Sixteen

Expert Analysis

Article 184. The procedure for ordering expert analysis.

If the investigator deems it necessary to have expert analysis he makes a ruling to that effect setting forth the reasons for ordering expert analysis, the last name of the expert or the name of the institution at which the expert analysis is to be made, the questions put to the expert, and the materials made available to the expert.

Prior to designating the expert the investigator examines the necessary information as to his speciality and competence.

The investigator is required to familiarize the accused with the ruling ordering expert analysis, and to inform him of his rights as specified in Article 185 of the present Code. A record of these facts is prepared and signed by the investigator and the accused.

Rulings ordering expert forensic psychiatric examination, and the conclusions of experts, are not communicated to the accused if his mental state is such that this is not feasible.

Article 185. The rights of the accused with respect to ordering expert analysis.

With respect to ordering and making expert analysis, the accused shall have the right:

- 1) to challenge the expert;
- 2) to request that an expert be designated from among persons indicated by himself;

- 3) to submit additional questions in order to obtain expert opinion upon them;
- 4) to be present, with the permission of the investigator, when the expert analysis is made, and to give explanations to the expert;
- 5) to familiarize himself with the conclusion of the expert.

If the petition of the accused is granted, the investigator either changes his ruling ordering expert analysis, or supplements it, whichever is appropriate.

If the petition is refused the investigator makes a ruling which is communicated to the accused, who gives a receipt for it.

Article 186. Obtaining specimens for comparative examination.

The investigator shall have the right to obtain from a suspect or accused person, specimens of his handwriting or other specimens required for comparative examination, with respect to which the investigator makes a ruling.

The investigator shall also have the right to obtain specimens of handwriting or other specimens for comparative examination from a witness or injured party, but only where it is necessary to ascertain whether the persons in question have left traces at the locus of the event or on material evidence.

Where necessary the taking of specimens for comparative analysis is effected with the participation of a specialist with no interest in the outcome of the case.

A record of the taking of specimens for comparative examination is prepared in accordance with the requirements of articles 141 and 142 of the present Code.

Article 197. Making expert analysis at an expert institution.

In ordering expert analysis by an expert at an appropriate expert institution, the investigator sends to that institution his ruling and the materials required for making the expert analysis.

Upon receipt of the ruling of the investigator, the head of the expert institution assigns the conduct of the expert analysis to one or several staff members at the institution in question. In accordance with the instructions of the investigator, the head of the expert institution informs the staff members to whom the

expert analysis has been assigned, as to the rights and obligations of the expert as specified in Article 82 of the present Code, and warns them as to their liability for refusal or avoidance of giving a conclusion, or for giving deliberately false conclusions under articles 181 and 182 of the Criminal Code RSFSR, in acknowledgment of which he obtains their signatures, which are forwarded to the investigator together with the conclusion of the expert.

Article 188. Placing the accused person or suspect in a medical institution.

If the necessity for hospital observation becomes evident in the course of forensic medical or forensic psychiatric expert examination, the investigator places the accused person or suspect in an appropriate medical institution, and a notation to this effect is made in the ruling ordering expert examination.

The permission of the prosecutor is required to place in a medical-psychiatric institution an accused person or suspect who is not being kept under guard.

The time spent in the psychiatric medical institution is counted as time spent under guard.

If a suspect is sent to a forensic medical institution in connection with making an expert examination, he is accorded the rights specified in articles 184 and 185 of the present Code.

Article 189. Making expert analysis elsewhere than at an expert institution.

If the expert analysis is to be made elsewhere than at an expert institution, the investigator, after making the ruling ordering expert analysis, summons the person to whom the expert analysis has been assigned, satisfies himself as to the latter's identity, speciality, and competence, ascertains the relationship of the expert to the accused, the suspect, and the injured party, and determines whether there are any grounds for challenging the expert.

The investigator furnishes the expert with the ruling ordering expert analysis, explains his rights and obligations as specified in Article 82 of the present Code, and warns him as to his liability for refusal or avoidance of giving a conclusion or for giving a deliberately false conclusion. With respect to the performance of these actions the investigator makes an entry in the ruling ordering expert analysis, which is attested by the signature of the expert.

If the expert makes any statements or initiates a petition with respect to the case, the investigator is required to prepare a record in accordance with the requirements of articles 141 and 142 of the present Code.

Article 190. The presence of the investigator when making an expert analysis.

The investigator shall have the right to be present when an expert analysis is made.

Article 191. The content of the conclusion of the expert.

After performing the necessary tests, the expert prepares a conclusion which must set forth: when, where, . . . by whom (last name, first name, and patronymic; education; specialty; academic degree and title; position held), and on what basis the expert analysis was made; who was present when the analysis was made; what materials the expert utilized; what tests were made; what questions were posed to the expert; and his reasoned answers. If in the course of the analysis the expert establishes circumstances relevant to the case with respect to which no questions were asked of him, he shall have the right to indicate them in his conclusion.

The conclusion of the expert is reduced to writing and signed by the expert.

Article 192. Interrogation of the expert.

The investigator shall have the right to question the expert in order to obtain an explanation of, or supplementary data on, the conclusion given by the latter. The expert shall have the right to give his answers in his own handwriting. A record of the interrogation of the expert is prepared in accordance with the requirements of articles 141 and 142 of the present Code.

Article 193. Presenting the conclusion of the expert to the accused.

The conclusion of the expert, or his report as to the impossibility of giving a conclusion, and also the record of the interrogation of the expert, are presented to the accused, who shall have the right to give his own explanations and make objections, and to request that additional questions be posed to the expert, and that another or additional expert analyses be ordered.

The rules of the present article also apply in those cases where

the expert analysis was made prior to beginning prosecution of a person as the accused.

Article 194. The procedure for ordering and making supplementary and repeated expert analysis.

Supplementary and repeated expert analysis is ordered in those cases specified in Article 81, and is made in accordance with the requirements of articles 184-193 of the present Code.

Chapter Seventeen

The Suspension and Termination of the Preliminary Investigation

Article 195. The grounds and time limits for suspending the preliminary investigation.

The preliminary investigation is suspended:

- 1) if the accused has concealed himself from the investigation or the court, or when for other reasons his place of residence has not been established;
- 2) in the event of a mental or serious illness of the accused certified by a physician on the staff of a medical institution;
- 3) in the event of a failure to establish the identity of the person to be prosecuted as the accused.

If one of the above circumstances is present, the investigator makes a reasoned ruling to suspend the preliminary investigation. If two or several accused persons are being prosecuted in connection with the case, and if the grounds for suspension do not apply to all of the accused persons, the investigator shall have the right to separate and suspend proceedings with respect to particular accused persons, or to suspend proceedings on the case as a whole.

In the cases specified in items 1 and 3 of the present article, the preliminary investigation is suspended only upon expiration of the time limit for conducting it; in the cases specified in Item 2 of the present article, it may be suspended prior to expiration of the time limit for the preliminary investigation.

Prior to suspending the preliminary investigation the investigator is required to perform all of those investigative actions which can be carried out in the absence of the accused, to take steps to discover him, and to establish the identity of the person who committed the crime.

Proceedings on a case which has been suspended shall be terminated upon the expiration of the period of limitation fixed by criminal statute.

Article 196. Search for the accused.

If the location of the accused is not known, the investigator takes the necessary steps to search for him. The investigator shall have the right to assign the search to organs of police inquiry. Note of such assignment is taken in the ruling on suspension of the preliminary investigation, or else a special ruling is made.

Search may be instituted either during conduct of the preliminary investigation or simultaneously with its suspension.

If the grounds specified in Article 89 of the present Code are present, the investigator may choose a measure of restraint with respect to the person being sought. In those cases specified in Article 96 of the present Code, the investigator, with the permission of the prosecutor, chooses a measure of restraint in the form of confinement under guard.

Article 197. Measures for establishing the identity of the person to be prosecuted as the accused.

After suspending the preliminary investigation in the case specified in Item 3 of Article 195 of the present Code, the investigator is required, both directly and through organs of police inquiry, to take steps to establish the identity of the person to be prosecuted as the accused.

Article 198. Resumption of the preliminary investigation.

A preliminary investigation which has been suspended can be resumed by a ruling of the investigator when the reason for suspension has ceased to exist or when it becomes necessary to carry out additional investigative actions.

Article 199. Conclusion of the preliminary investigation.

The preliminary investigation is concluded with the preparation of an indictment, a decision to forward the file to the court for consideration of the question of employing compulsory measures of a medical character, or a decision to terminate the proceedings.

Article 200. Familiarizing the injured party, the civil plaintiff, and the civil defendant with the materials on the case.

When the investigator deems that the preliminary investigation has been completed and that the evidence gathered is sufficient for the preparation of an indictment, he is required to communicate this fact to the injured party, the civil plaintiff, and the civil defendant or their representatives, and at the same time to explain to them that they are entitled to familiarize themselves with the materials on the case.

In the event of a verbal or written petition to this effect on the part of any of the aforementioned persons, the investigator familiarizes the injured party and the civil plaintiff or their representatives with the materials on the case, and the civil defendant or his representative with the materials on the case which have a bearing upon the claim which has been preferred.

With respect to familiarizing the injured party, civil plaintiff, and civil defendant or their representatives with the materials on the case, records are prepared in accordance with the requirements of articles 141 and 142 of the present Code. The records show what materials of the case were made available to the injured party, the civil plaintiff, and the civil defendant or their representatives, and what petitions were filed in this connection. Written petitions are appended to the file.

In the event of a total or partial refusal to satisfy a petition the investigator makes a reasoned ruling to this effect. The ruling is communicated to the person presenting the petition.

Article 201. Familiarizing the accused with all of the materials on the case.

When the investigator deems that the evidence gathered is sufficient for the preparation of an indictment, and when he has satisfied the requirements of Article 200 of the present Code, he informs the accused that the investigation of his case has been completed and that he has the right to familiarize himself with all of the materials on the case, either personally or with the aid of defense counsel; also, that he has the right to file a petition for additional preliminary investigation.

If the accused has not expressed a desire to have defense counsel, he is provided with all of the materials on the case so that he can familiarize himself with them. In those cases where the

accused requests that defense counsel be summoned to participate in familiarization with the proceedings on the case, and also in those cases where the defense counsel enters the case from the moment the charges are brought, the investigator makes all of the materials on the case available to both the accused and defense counsel. In this case the furnishing of the materials on the case shall be deferred until the appearance of defense counsel, but not for more than five days. If it is impossible for the defense counsel chosen by the accused to appear within this period of time, the investigator takes steps to summon another defense attorney. All of the materials on the case are made available to the accused and his defense counsel in the form of numbered files. At the request of the accused or of his defense counsel, the investigator shall have the right to permit them to familiarize themselves with the materials on the case separately.

If prosecution has been initiated against several accused persons in the same case, all of the materials on the case are made available to each of them.

When the accused and his counsel have completed their familiarization with the materials on the case, the investigator is required to ask them whether they desire to petition for additional investigation and, if so, with respect to what in particular.

The accused shall have the right, in the process of familiarizing himself with the materials on the case, to make excerpts of necessary information.

Article 202. The rights of defense counsel in familiarizing himself with all of the materials on the case.

Defense counsel for the accused shall have the right:

- 1) to consult with the accused in private;
- 2) to familiarize himself with all of the materials on the case, and to make excerpts of necessary information therefrom;
- 3) to discuss with the accused the question of filing a petition;
- 4) to file petitions with respect to carrying out investigative actions, demanding evidence and appending it to the file, and all other questions relevant to the case;
- 5) to challenge the investigator, the prosecutor, the expert, and the interpreter;
- 6) to file a complaint with the prosecutor concerning actions of the investigator which violate or are prejudicial to the rights of defense counsel or of the accused;

7) to witness, with the permission of the investigator, the performance of investigative actions carried out at the request of the accused and his counsel.

Article 203. The record of notification of completion of the preliminary investigation and of the fact that the materials on the case have been made available to the accused and his counsel.

With respect to the fact that all of the materials on the case have been made available to the accused and his counsel, the investigator prepares a record in accordance with the requirements of articles 141 and 142 of the present Code. The record takes note of the fact that the accused has been notified of the completion of the preliminary investigation; that his rights have been explained; states what particular materials (number of volumes and pages) were made available for purposes of familiarization; where and during how long a period of time the familiarization with the materials on the case was effected; what petitions were filed by the accused and his counsel; and what statements were made by them. If the accused refuses to familiarize himself with the materials on the case, a notation to this effect is entered in the record, and the motives for the refusal are set forth, if the accused has stated them.

Article 204. Petitions of the accused and his counsel for additional preliminary investigation.

Petitions for additional preliminary investigation may be lodged by the accused and his counsel, verbally or in writing. The petitions are entered in the record. In addition, written petitions are appended to the file.

If a petition is filed for the clarification of circumstances relevant to the case, the investigator is required to supplement the preliminary investigation. If defense counsel is present at the additional investigative actions which are carried out, he shall have the right, with the permission of the investigator, to question witnesses, the injured party, the experts, and the accused, and to request that data relevant to the case be made a part of the record. The investigator may rule out the questions asked by defense counsel; but a question which has been ruled out must be entered in the record.

If the investigator refuse, wholly or in part, to grant the petitions which have been filed, he makes a reasoned ruling to this effect and communicates it to the accused.

When the supplementary investigative actions have been carried

out, the investigator is again required to familiarize the accused and his counsel with the materials on the case in conformity with the requirements of articles 201-203 of the present Code.

Article 205. The indictment.

The indictment consists of a descriptive part and a resolutions part.

The descriptive part sets forth the substance of the case: the place and time of commission of the crime; the methods, motives, consequences, and other material circumstances; information on the injured party; evidence tending to substantiate the fact of the crime and the guilt of the accused; circumstances mitigating or aggravating the responsibility of the accused; arguments advanced by the accused in his defense; and the results of verifying those arguments.

The resolutions part sets forth information on the identity of the accused and gives a formulation of the charge preferred, indicating the article or articles of criminal law dealing with the crime in question.

The indictment is signed by the investigator, and the time and place where it was prepared are indicated.

Article 206. Annexes to the indictment.

Appended to the indictment is a list of those persons who, in the opinion of the investigator, should be summoned for the court hearing, together with information on the time covered by the investigation; the measures of restraint selected, showing the time of confinement under guard; information on material evidence; on any civil claim; on the measures taken to secure the civil claim and any possible confiscation of property; and on court expenses.

The list of persons to be summoned for the sitting of the court contains information on their domicile or location and the pages of the file on which their testimony or conclusions are set forth.

Article 207. Transmitting a criminal case to the prosecutor.

When the investigator has signed the indictment he immediately transmits the case to the prosecutor.

Article 208. Grounds for terminating criminal proceedings.

Criminal proceedings are terminated:

- 1) if the grounds specified in articles 5-9 of the present Code are found to exist;
- 2) when the participation of the accused in the commission of the crime has not been proved, provided all possibilities for gathering additional evidence have been exhausted.

If prosecution has been initiated against several accused persons in the same proceedings and the termination of the proceedings does not apply to all of the accused persons, the investigator terminates the case with respect to individual accused persons.

Article 209. The ruling terminating criminal proceedings.

With respect to terminating criminal proceedings the investigator makes a reasoned ruling in which the substance of the case and the reasons for termination are set forth.

The question as to material evidence, rescinding measures of restraint, and cancelling the sequestration of property shall be settled by the ruling. The ruling is signed by the investigator, and the time and place of its preparation are indicated.

The investigator sends a copy of the ruling terminating the proceedings to the prosecutor. At the same time the investigator gives written notification of the termination and the reasons for the termination to the person being prosecuted as the accused, the injured party, and the person or institution at whose complaint the proceedings were initiated, and explains the procedure for filing an appeal.

If the investigation has revealed facts requiring the application of measures of social, disciplinary, or administrative action vis-à-vis the person being prosecuted as the accused, or other persons, the investigator, in terminating the proceedings, reports these facts to the social organization or comrades' court, or collective of workers, or administration of the corresponding enterprise or institution for execution of social, disciplinary, or administrative measures of action.

The ruling terminating the proceedings may be appealed to the prosecutor within five days from the time of notification of termination of the proceedings.

Article 210. Reopening proceedings which have been terminated.

When there are grounds for so doing, the prosecutor shall have the right to make a ruling rescinding the investigator's ruling to terminate the proceedings and reopening the case.

Proceedings which have been terminated can be reopened only if the period of limitation has not run.

If the proceedings have been terminated under item 3 or 4 of Article 5 of the present Code, but the accused objects to the termination, the investigator shall make a ruling reopening the proceedings.

Chapter Eighteen

The Prosecutor's Supervision over Compliance with the Laws during the Police Inquiry and the Preliminary Investigation

Article 211. The authority of the prosecutor in exercising supervision over compliance with the laws during the police inquiry and the preliminary investigation.

Supervision over compliance with the laws during the police inquiry and the preliminary investigation is exercised by the prosecutor in accordance with the Decree on Prosecutor Control in the USSR.

1. The prosecutor is required:

- a) to prosecute as criminally liable all persons guilty of committing crimes; to carry out measures ensuring that no crime remains undiscovered and no criminal avoids prosecution;
- b) strictly to ensure that no citizen is subjected to illegal and unfounded criminal prosecution or any other illegal infringement of his rights;
- c) to ensure undeviating adherence to the procedure for conducting police inquiry and preliminary investigation established by the present Code;
- d) to exercise control to ensure that no person is arrested otherwise than by ruling of the court or with the permission of the prosecutor; in deciding the question as to authorizing arrest the prosecutor is required thoroughly to familiarize himself with all of the materials serving as grounds for the arrest and, where necessary, personally to interrogate the accused person or the suspect.

2. The prosecutor shall have the right:

a) to issue instructions for carrying out the police inquiry and the preliminary investigation; for selecting, changing, or rescinding measures of restraint relative to a suspect or accused person; for initiating prosecution of the accused, classifying the crime, and for the number of charges; for forwarding the file; and for carrying out particular investigative actions in making search for criminals who have concealed themselves;

b) to require, for purposes of verification, that the organ of police inquiry and the investigator furnish him with criminal files, documents, materials, and other information on crimes which have been committed, on the course of the police inquiry, the preliminary investigation, and the search for criminals;

c) to participate in the police inquiry and the preliminary investigation and, where necessary, personally to carry out the preliminary investigation or particular investigative actions on any case;

d) to return criminal cases to the organ of police inquiry or the investigator with his own instructions in writing as to additional investigation;

e) to remove the person conducting the police inquiry or the investigator from further conduct of the inquiry or the investigation if he has violated the law in investigating the case;

f) to transfer any case from the organ of police inquiry to the investigator, and also from one investigator to another, with a view to assuring the most complete and objective investigation of the case;

g) to instruct organs of police inquiry to carry out particular investigative actions and search measures on cases being prosecuted by investigators of organs of the Prosecutor's Office;

h) to terminate criminal proceedings on the grounds specified in the present Code.

Article 212. The obligatory nature of the prosecutor's instructions.

The instructions of the prosecutor are conveyed in writing and are binding upon the investigator and the person conducting the police inquiry. The filing of a complaint with a higher prosecutor against instructions received shall not serve to suspend their execution except for the cases specified in Article 127 (second part) of the present Code.

Article 213. Questions to be decided by the prosecutor with respect to cases on which an indictment has been returned.

When receiving a case from the organ of police inquiry or the investigator, the prosecutor is required to ascertain:

- 1) whether the act with which the accused is charged took place and, if so, whether it contained the elements of a crime;
- 2) whether there are any circumstances in the case necessitating the termination of proceedings;
- 3) whether the police inquiry or the preliminary investigation was carried out thoroughly, completely, and objectively;
- 4) whether the charges preferred are supported by the evidence in the case;
- 5) whether the charges cover all of the acts of the accused established by the police inquiry or the preliminary investigation;
- 6) whether all of the persons involved in the commission of the crime have been the subject of prosecution;
- 7) whether the classification of the crime is correct;
- 8) whether the measure of restraint was correctly chosen;
- 9) whether measures have been taken to secure the civil claim and possible confiscation of property;
- 10) whether the circumstances facilitating the commission of the crime have been ascertained, and whether measures have been taken to eliminate them;
- 11) whether the indictment was prepared in accordance with the requirements of the present Code;
- 12) whether all other requirements of the present Code were met in carrying out the police inquiry or preliminary investigation.

Article 214. The decision of the prosecutor with respect to cases on which an indictment has been returned.

The prosecutor is required, within five days, to consider the case he has received and to make one of the following decisions with respect to it:

- 1) if he considers that there are sufficient grounds to transfer the case to court, to approve the indictment with his own resolution;
- 2) to return the case to the organ of police inquiry or the investigator with his own written instructions for additional inquiry or investigation;
- 3) to terminate the proceedings, for which purpose he makes a ruling in accordance with Article 209 of the present Code;
- 4) in the event that the indictment does not meet the requirements of Article 205 of the present Code, to return the file to the investigator or the organ of police inquiry with his written instructions for preparing a new indictment;
- 5) to prepare a new indictment and remove the previous indictment from the file, returning it to the organ of police inquiry or the investigator with indications of the errors discovered.

Article 215. Making a change in the charges when the indictment is approved by the prosecutor.

The prosecutor shall have the right to make a ruling eliminating individual counts from the indictment, and also to apply a law governing a less serious crime. Where necessary in such a case, a new indictment is prepared.

If it is necessary to replace the charge with a more serious one, or which a charge which differs substantially from that originally preferred in terms of the factual circumstances, the prosecutor returns the file to the organ of police inquiry or the investigator for the preparation of new charges.

Article 216. The changing, by the prosecutor, of the measure of restraint or the list of persons to be called as witnesses for the sitting of the court.

The prosecutor shall have the right to rescind or change a previously selected measure of restraint, or to select a restraint if such has not already been chosen.

The prosecutor shall also have the right to change the list of persons to be called as witnesses at the court sitting, appended to the indictment.

Article 217. The transfer of the case to court by the prosecutor.

When the prosecutor has approved the indictment or prepared a new indictment, he transfers the case to the court which has jurisdiction over it, and informs the accused of the court to which the case has been transferred.

Simultaneously with transferring the case, the prosecutor informs the court as to whether he considers it necessary to sustain the charges in court.

Once the case has been transferred to court, all petitions and appeals on the case are addressed directly to the court.

Chapter Nineteen

Complaints regarding the Actions of the Organ of
Police Inquiry, the Investigator, and the Prosecutor

Article 218. The procedure for filing complaints.

Complaints against the actions of the organ of police inquiry or the investigator are submitted to the prosecutor directly or through the person conducting the police inquiry or the investigator with respect to whose actions the complaint is being submitted. Complaints may be either in writing or verbal. Oral complaints are entered in a record which is signed by the complainant and the person receiving the complaint.

The person conducting the police inquiry or the investigator is required to forward the complaint, together with his own explanations, to the prosecutor within 24 hours.

The filing of a complaint shall not serve to suspend execution of the action complained of, pending decision upon the former, unless such is found necessary by the person conducting the police inquiry, the investigator, or the prosecutor.

Article 219. The consideration of complaints by the prosecutor.

The prosecutor is required to consider a complaint within three days from the time it was received, and to inform the complainant as to the results of his consideration. In the event of a rejection the prosecutor is required to set forth the reasons for which the complaint was found to be unjustified.

Article 220. Complaints regarding the actions and decisions of the prosecutor.

Complaints regarding the actions and decisions of the prosecutor are filed with the higher prosecutor.

SECTION THREE

THE PROCEEDINGS IN THE COURT OF FIRST INSTANCE

Chapter Twenty

Bringing the Accused to Trial and Making

Preparations for the Sitting of the Court

Article 221. Bringint the accused to trial.

If there are sufficient grounds for examining the case at a sitting of the court, the judge, without deciding the question of

guilt in advance, makes a ruling bringing the accused to trial.

If the judge disagrees with the conclusions of the indictment, or if it is necessary to change the measure of restraint employed with respect to the accused, the case shall be considered at an executive session of the court. In this case, regardless of the reasons for considering the case at an executive session, the court decides all questions relative to the conduct of the executive session.

The question of bringing the accused to trial shall be decided by the judge, or the court in executive session, not later than 14 days from the time the case was transferred to the court.

Article 222. Questions to be decided in bringing the accused to trial.

When the judge, or the court in executive session, decides the question as to whether to bring the accused to trial, the following shall be ascertained with respect to each of the accused persons:

- 1) whether the case is justiciable by the court in question;
- 2) whether the act with which the accused is charged contains the elements of a crime;
- 3) whether there are circumstances necessitating termination or suspension of proceedings;
- 4) whether the evidence gathered on the case is sufficient to justify its examination at a sitting of the court;
- 5) whether the requirements of the present Code have been met in the initiation of the proceedings, in the conduct of the police inquiry, and in the conduct of the preliminary investigation;
- 6) whether the criminal law has been correctly applied to the acts with which the accused is charged;
- 7) whether the indictment has been prepared in accordance with the requirements of the present Code;
- 8) whether the measure of restraint with respect to the accused was properly selected;
- 9) whether measures have been taken to assure restitution for material damage caused by the crime, and possible confiscation of property.

Article 223. Considering petitions and requests.

In deciding the question as to whether to bring the accused to trial, the judge, or the court in executive session, is required to hear all petitions and requests of persons and organizations with respect to permitting participation in the case, the further disposition of the case, requiring additional evidence, changing the measure of restraint, civil claims, and measure for securing them. In this connection the judge, or the court in executive session, shall have the

right to ~~summon~~ the person, or the representative of the organization, who has filed the petition, for purposes of giving their views.

The person or organization filing the petition shall be informed as to the results of hearing the petition. A refusal to grant a petition cannot be appealed. However, the petition can be presented again at the sitting of the court.

Article 224. The composition of the court in executive session.

At the executive sessions of all courts, criminal cases shall be considered by a bench consisting of a judge and two people's assessors.

Participation of the prosecutor at the executive session is obligatory.

Article 225. The procedure for the executive session.

The consideration of a case in executive session begins with a report by the judge, who gives the reasons for his disagreement with the conclusions of the indictment or with the measure of restraint. The court then hears the opinion of the prosecutor. Those persons who have been summoned to the court session are then invited in, and are heard with respect to the petitions they have submitted. The court hears the conclusion of the prosecutor with respect to the petitions which have been presented. The decision is made in camera.

Witnesses and experts shall not be summoned for the executive session.

Article 226. Types of decisions issued by the court in executive session.

One of the following decisions is issued by the court in executive session:

- 1) to bring the accused to trial;
- 2) to remand the case for additional investigation;
- 3) to suspend proceedings on the case;
- 4) to transfer the case for lack of jurisdiction;
- 5) to terminate the proceedings.

Article 227. Arraigning the accused in executive session.

If it is concluded that there are sufficient grounds for examining the case at a sitting of the court, the court in executive session, without deciding the question of guilt in advance, makes

a decision to bring the accused to trial. In this case the court shall have the right to eliminate particular counts from the indictment or to apply a criminal statute governing a less serious crime, always provided that the new charges do not differ substantially from those contained in the indictment, in terms of the factual circumstances.

The decision to eliminate particular counts from the charges, or to apply a different criminal statute, shall be justified in the decision of the executive session.

Article 228. Deciding questions associated with preparations for examining the case at a sitting of the court.

Having deemed that there are sufficient grounds for bringing the accused to trial, the judge, or the court in executive session, is also required to decide the following questions:

- 1) concerning the participation of a state prosecutor in the trial;
- 2) whether to allow a public prosecutor to participate in the trial;
- 3) whether to allow the person selected by the accused to act as defense counsel, or whether to appoint counsel;
- 4) whether to allow public defense counsel to participate in the trial;
- 5) concerning persons to be summoned for the court sitting as the injured party, the civil plaintiff, the civil defendant, their representatives, witnesses, and experts;
- 6) concerning the summoning of an interpreter;
- 7) concerning the time and place of the trial;
- 8) concerning hearing the case in a closed session of the court in those cases specified by Article 18 of the present Code.

A ruling of the judge, or decision of the executive session of the court, as to the necessity for the prosecutor to participate in the trial, is binding upon the latter.

If the prosecutor, when he transmits the case to the court, states that he considers it necessary to sustain the charges, the judge, or the court in executive session, shall not have the right to refuse him.

Article 229. The ruling of the judge and the decision of the court sitting in executive session.

The ruling of the judge, or the decision of the court sitting in executive session, shall show:

- 1) the time and place of issue of the ruling or decision;

2) the position and last name of the judge making the ruling, or the composition of the court in executive session; the last name of the secretary; the last name and position of the prosecutor taking part in the executive session.

3) the reasons for, and substance of, the decisions made.

A ruling is signed by the judge. A decision is signed by the presiding judge and the people's assessors.

Article 230. The ruling or decision on arraignment.

The ruling of the judge, or the decision of the executive session, on the arraignment of the accused shall contain: the conclusion as to the sufficiency of evidence for examining the case at a sitting of the court; the decision to arraign the accused, giving the name of the person arraigned and the criminal statute to be applied; the decision with respect to the measure of restraint with respect to the defendant, and decisions on petitions, requests, and the matters enumerated in Article 228 of the present Code.

Article 231. Suspending proceedings and transferring the case for lack of jurisdiction.

If in the course of considering the question of arraignment it is ascertained that the accused has concealed himself and his location is not known, the judge, or the court in executive session, makes a ruling or decision to suspend proceedings on the case pending search for the accused, and the file is returned to the prosecutor, except for those cases enumerated in Item 1, Article 246, and Article 257 of the present Code.

If a physician on the staff of a medical institution certifies that the accused has a serious illness making it impossible for him to be present at the trial, the judge, or the court in executive session, makes a ruling or decision to suspend proceedings until the accused has recovered.

If the judge, or the court in executive session, ascertains that the case is not justiciable by the court in question, a ruling or decision to transfer the case for lack of jurisdiction is made.

Article 232. Remanding the case for additional investigation.

The court in executive session remands the case for additional investigation in the following circumstances:

1) an incomplete police inquiry or preliminary investigation which cannot be supplemented at the trial;

- 2) substantial violation of the criminal procedural law in carrying out the police inquiry or preliminary investigation;
- 3) if there are grounds for preferring other charges against the accused which are associated with the charges previously brought, or for changing the charges and substituting more serious charges or charges which differ substantially, in terms of the factual circumstances, from those contained in the indictment;
- 4) if there are grounds for instituting prosecution on criminal charges, in connection with the same case, against other persons, where it is impossible to separate the materials of the case with respect to them;
- 5) incorrect combining or dividing of the case.

For purposes of additional investigation, the file is returned to the prosecutor. In this connection the court is required to show in its decision the cause why the case is being returned, and what circumstances must be additionally elucidated.

When a case is remanded for additional investigation, the court is required to decide the question of the measure of restraint with respect to the accused.

Article 233. Measures for securing civil claims and the confiscation of property.

If the person conducting the police inquiry or the investigator has not taken measures to assure restitution for material damage caused by the crime, and the possible confiscation of property, and if such measures cannot be taken directly by the court, the judge, or the court in executive session, instructs the appropriate organs to take the necessary measures of security.

Article 234. Terminating the proceedings.

In the presence of the circumstances enumerated in articles 5-9 and Item 2, Article 208 of the present Code, the court in executive session terminates the proceedings. In this case the court rescinds the measures of restraint and measures for securing civil claims and the confiscation of property which have been taken, and decides the question as to material evidence. A copy of the decision to terminate the proceedings is furnished to the person against whom criminal prosecution had been instituted, and to the injured party.

If facts have been established which require the application of measures of social action to the person against whom criminal prosecution had been instituted, the court, in terminating the

proceedings, reports these facts to the appropriate comrades' court, commission on minors, social organization, or collective of workers.

If the proceedings are terminated for the reasons enumerated in Article 9 of the present Code, the court informs the social organization or collective of workers as to the granting of its petition and that the person against whom criminal prosecution had been instituted is being transferred to its custody on a surety basis.

Article 235. The minutes of the executive session.

The minutes of the executive session shall show: the time and place of the session; the designation and composition of the court; the secretary; the prosecutor; the persons summoned by the court; the case being considered; the acts of the court in the order in which they took place; the requests and petitions of the persons summoned for the executive session; the decisions taken without retiring to chambers; references to the decisions made in camera.

The minutes are signed by the presiding judge and the secretary.

Article 236. Assuring the possibility of familiarization with the materials of the case.

After the arraignment of the accused, the judge is required to assure that it is possible for the prosecutor, the defendant, the defense counsel, the injured party, the civil plaintiff, and the civil defendant, or their representatives to familiarize themselves with all of the materials of the case, and to make the necessary excerpts therefrom.

Article 237. Furnishing a copy of the indictment.

The defendant shall be provided by the court with a copy of the indictment.

If in deciding the question of arraignment a change is made in the charges, in the measure of restraint, or in the list of persons to be summoned to the court, the defendant shall also be provided with a copy of the decision of the court or the ruling of the judge.

In cases involving the crimes specified in articles 112, 130 (first part), and 131 of the Criminal Code RSFSR, if no preliminary investigation or police inquiry has been conducted, the defendant shall be provided with a copy of the statement of the injured party.

Examination of the case at a sitting of the court shall not be commenced earlier than three days from the time the defendant was furnished with the above documents.

Article 238. Issuing summons for the court sitting.

The judge issues an order summoning to the sitting of the court those persons named in his ruling or in the decision of the executive session, assures that they are served with a process, and takes steps to prepare for the sitting of the court.

Article 239. Time limits for examining the case at a sitting of the court.

The hearing of a case at a sitting of the court shall be commenced not later than 14 days from the time of issue of the ruling of the judge or decision of the executive session on the arraignment of the accused.

Chapter Twenty-One

The General Conditions of the Judicial Examination

Article 240. The directness, oral nature, and continuity of the judicial examination.

In considering a case, a court of first instance is required directly to investigate the evidence on the case; to question defendants, injured parties, and witnesses; to hear the conclusions of experts; to examine material evidence; and to make public the minutes and other documents.

The sitting of the court on each case is continuous, except for recesses taken for purposes of rest. The consideration of other cases by the judges, prior to completion of the hearing on the case already commenced, is prohibited.

Article 241. The inalterability of the composition of the court when hearing a case.

Each case shall be heard by one and the same bench. If one of the judges is unable to continue to participate in the sitting, he shall be replaced by another judge and the hearing shall be recommenced, except for those cases specified by Article 242 of the present Code.

Article 242. The supernumerary people's assessor.

In a case whose examination requires an extended period of time, a supernumerary people's assessor may be called. The supernumerary people's assessor is present in the courtroom from the beginning of the examination of the case in question, and in the event of the departure of a people's assessor he replaces the latter.

If the supernumerary people's assessor who has replaced the departed assessor does not require recommencement of the acts of the court, the hearing is continued.

Article 243. The judge presiding at the sitting of the court.

The sitting of a rayon (municipal) people's court is presided over by the presiding judge of that court or by a people's judge. The sitting of any other court is presided over by the presiding judge, deputy presiding judge, or member of the court.

The presiding judge is in charge of the sitting, taking all steps prescribed by the present Code for the thorough, complete, and objective examination of the circumstances of the case and for ascertaining the truth, eliminating from the judicial examination everything which is not relevant to the case, and assuring the educational effect of the courtroom proceedings.

If any of the persons participating in the judicial examination take exception to the actions of the presiding judge, those objections are entered in the minutes of the court sitting.

Article 244. The secretary of the court.

The secretary of the court sitting keeps a record of the sitting. He is required completely and accurately to record in the minutes the actions and decisions of the court, together with those actions of participants in the proceedings which take place in the course of the sitting.

In the event of disagreement with the presiding judge as to the keeping of the minutes, the secretary shall have the right to append his remarks to the minutes, which remarks shall be considered by the whole bench.

Article 245. Equality of rights among participants in the judicial examination.

The prosecutor, the defendant, defense counsel, the injured party,

the civil plaintiff, the civil defendant, and their representatives at the judicial examination shall have equal rights with respect to the introduction of evidence, participation in the examination of evidence, and filing petitions.

Article 246. Participation of the defendant in the judicial examination.

In a court of first instance, examination of the case takes place with the participation of the defendant, whose appearance in court is obligatory.

Examination of a case in the absence of the defendant is permitted only in exceptional cases, provided this does not obstruct the establishment of the truth about the case:

1) when the defendant is outside the boundaries of the USSR and has avoided appearing in court;

2) when, in a case involving a crime not punishable by deprivation of freedom, the defendant petitions for examination of the case in his absence. However, the court shall have the right to compel the presence of the defendant.

Article 247. The consequences of a failure to appear on the part of the defendant.

If the defendant fails to appear the case may be postponed, except for those cases specified by Item 2, Article 246 of the present Code. The court shall have the right to subject to temporary arrest a defendant who has failed to appear, and to select or change a measure of restraint with respect to him.

Article 248. Participation of the prosecutor in the judicial examination.

The prosecutor sustains the state's charges before the court, takes part in examining the evidence, offers conclusions on questions arising in the course of judicial examination, and presents to the court his views on the application of the criminal statute and the measure of punishment with respect to the defendant.

In sustaining the charges, the prosecutor is guided by the requirements of the law and his own intimate conviction based on an examination of all circumstances of the case.

If as a result of the judicial examination the prosecutor arrives at the conviction that the data from the judicial investigation do

not confirm the charges brought against the defendant, he is required to withdraw the charges and give his reasons for withdrawal to the court.

Withdrawal of the charges by the prosecutor does not relieve the court of its responsibility to continue hearing the case and to decide, on general principles, the question as to the guilt or innocence of the defendant.

The prosecutor shall have the right to present or sustain a civil claim submitted by an injured party if such is required in order to protect the state or public interests or the interests or rights of citizens.

Article 249. Participation of defense counsel in the judicial examination.

Defense counsel participates in the examination of evidence, expresses his opinion on questions arising in the course of the judicial examination, and gives the court the views of the defense on the substance of the charges, relative to circumstances mitigating responsibility, and with respect to the measure of punishment and the consequences of the crime as regards civil law.

Article 250. Participation of public prosecutors and defenders in the judicial examination.

By decision of the court, representatives of social organizations of workers may be permitted to participate in the judicial examination of criminal cases as public prosecutors or defenders.

A public prosecutor shall have the right to introduce evidence, to take part in the examination of evidence, to present petitions and challenges to the court, and to participate in the pleadings, giving the court his opinion as to the substantiation of the charges, the social danger of the defendant, and of the act committed by him. The public prosecutor may express his views as to the application of the criminal statute and the measure of punishment with respect to the defendant, and on other aspects of the case. The public prosecutor shall have the right to withdraw charges if the data from the judicial examination provide grounds for so doing.

The public defender shall have the right to introduce evidence, take part in the examination of evidence, present petitions and challenges to the court, participate in the pleadings, giving the court his opinion as to circumstances mitigating the guilt of the defendant, or exculpating him, and as to the possibility of

mitigating the punishment of the defendant, of his conditional conviction, or of his exemption from punishment and release into the custody of that social organization or collective of workers in whose name the defender is acting.

Article 251. The consequences of a failure to appear on the part of the prosecutor, the public prosecutor, defense counsel, or public defender.

If the prosecutor fails to appear for a sitting of the court, the court decides the question as to the feasibility of hearing the case in his absence, or postponing it. If the court deems the participation of the prosecutor to be necessary, examination of the case is postponed.

If defense counsel fails to appear and it is impossible to replace him at this sitting, hearing of the case is postponed. The replacement of defense counsel who has failed to appear in court is permitted only by agreement with the defendant.

If the public prosecutor or public defender fails to appear, the court, depending upon the circumstances, decides whether to postpone hearing of the case or to hear it in his absence .

A prosecutor or defense counsel who is just entering the case shall be accorded the necessary time to prepare for participation in the hearing.

Failure to appear on the part of a prosecutor or an advocate without good and sufficient reason is reported by the court to the higher prosecutor or to the presidium of the college of advocates, whichever is appropriate. Failure to appear on the part of a public prosecutor or public defender without good and sufficient reason is reported by the court to the appropriate social organization.

Article 252. The consequences of failure to appear on the part of a civil plaintiff or civil defendant.

If the civil plaintiff or his representative fails to appear, the court shall decline to hear the civil suit. However, the injured party retains his right to bring suit by way of civil proceedings.

The court shall have the right to hear a civil suit in the absence of the civil plaintiff, upon petition from the latter.

The court shall hear the civil suit irrespective of the appearance of the civil plaintiff or his representative, if the action is sustained by the prosecutor, or if the court deems such hearing to be necessary.

The failure of the civil defendant or his representative to appear in court does not obstruct the hearing of a civil action.

Article 253. The consequences of failure to appear on the part of the injured party.

If the injured party fails to appear the court shall decide whether to hear the case or to postpone it, depending upon whether a complete elucidation of all circumstances in the case and the protection of the injured party's rights and legal interests are possible in the absence of the latter.

If in connection with a case involving a crime specified in articles 112, 130 (first part), or 131 of the Criminal Code RSFSR the injured party is absent from the hearing without good and sufficient reason, and if no preliminary investigation or police inquiry has been conducted on the case, the proceedings shall be terminated. Under these circumstances, however, at the petition of the defendant, the case may be considered on its merits in the absence of the injured party.

Article 254. The limits of judicial examination.

The case shall be examined in court only with respect to the accused persons and only with respect to those charges on the basis of which they were arraigned.

The charges may be changed in court, provided this does not prejudice the position of the defendant and does not infringe upon his right to defense. If the change in the charges involves an infringement of the right of the defendant to protection, the court shall remand the case for additional investigation or inquiry.

The substitution, in court, of a charge more serious than that for which the accused was arraigned, or of one which differs substantially from the latter in terms of factual circumstances, is prohibited.

If the change in the charges consists in eliminating some of them, or the elements of a crime aggravating the guilt of the defendant, the court shall have the right to continue hearing the case.

Article 255. Initiating criminal proceedings on the basis of a new charge.

If the judicial examination establishes circumstances indicating that the defendant has committed a crime with which he was not previously charged, the court, without suspending the hearing, initiates proceedings under the new charge and transmits the necessary materials for purposes of conducting a police inquiry or preliminary investigation in accordance with the general procedure.

If the new charge is associated with the original charge and it is not feasible to consider them separately, the entire case shall be returned for additional investigation.

Article 256. Initiating criminal proceedings with respect to another person

If the judicial examination establishes circumstances indicating the commission of a crime by a person against whom criminal prosecution has not been instituted, the court initiates proceedings with respect to that person and transmits the necessary materials for purposes of conducting a police inquiry or preliminary investigation.

If the newly initiated cases is associated with the case being heard and it is not feasible to hear them separately, the court transmits the entire case for purposes of additional investigation.

The initiation of proceedings with respect to a witness, injured party, or expert who has deliberately given false testimony or a false conclusion may be effected only simultaneously with the pronouncement of the judgment.

The court shall have the right to employ a measure of restraint with respect to the person against whom prosecution has been instituted, in accordance with the rules of articles 89, 91, and 92 of the present Code.

Article 257. Postponing the hearing and suspending criminal proceedings.

When it is impossible to hear the case owing to the failure of any of the persons summoned, to appear in court or because of the necessity for producing new evidence, the court shall postpone the hearing and take steps to summon those persons who failed to appear, or to require the production of new evidence.

If the defendant has concealed himself, or if a mental or

serious illness makes it impossible for the latter to appear in court, the court suspends proceedings with respect to that defendant pending search for him, or his recovery, and continues the hearing with respect to the remaining defendants. If, however, the fact of separate hearings hampers the establishment of the truth, all proceedings on the case are suspended. Search for a defendant who has concealed himself is instituted by a decision of the court.

Article 258. Transmitting a criminal case for additional investigation.

If in the course of the hearing those circumstances specified in Article 232 of the present Code are established, the court transmits the file for additional investigation.

When the file is returned to the court after completion of the additional investigation, the court decides the question of bringing the accused to trial in accordance with the general procedure.

Article 259. Terminating criminal proceedings at a court sitting.

The proceedings shall be terminated at the court sitting if the judicial examination establishes those circumstances specified in Article 5 of the present Code, except for those cases enumerated in the second part of that article.

Cases involving crimes specified in articles 112, 139 (first part), and 131 of the Criminal Code RSFSR on which no preliminary investigation or police inquiry has been carried out, shall also be terminated in the event of reconciliation between the injured party and the defendant, except for those cases specified in the fourth part of Article 27 of the present Code.

Article 260. Settling the question as to the measure of restraint.

In the course of the hearing the court shall have the right to select, change, or rescind the measure of restraint with respect to the defendant.

Article 261. The procedure for issuing decisions at a court sitting.

The court issues decisions on all questions settled by the court in the course of the hearing.

Decisions to transmit the file for additional investigation,

to institute proceedings on the basis of a new charge or with respect to another person, to terminate proceedings, to select, change, or rescind a measure of restraint, decisions on challenges, and on ordering expert analysis, are made by the court in camera and issued in the form of individual documents signed by all members of the court.

All other decisions may, at the discretion of the court, be made in accordance with the above procedure, or else they may be issued after consultation among the judges in the courtroom and inserted in the minutes of the hearing.

Article 262 . Courtroom procedure.

When the judges enter the courtroom, all present shall stand.

All parties to the proceedings address the bench, give testimony, and make statements while standing. Exceptions to this rule are allowed only with the permission of the presiding judge.

All those participating in the proceedings, and likewise all persons present in the courtroom, shall unquestioningly obey the instructions of the presiding judge regarding the maintenance of order in the courtroom.

Persons under the age of sixteen years are not permitted to be present in the courtroom unless they are accused persons, injured parties, or witnesses.

Article 263. Measures taken with respect to persons disturbing order in the courtroom.

If the defendant disturbs the order in the courtroom during the trial, or if he refuses to obey the instructions of the presiding judge, the latter warns the defendant that if he repeats the actions mentioned above he will be removed from the courtroom. If the defendant again disturbs the order in the courtroom, he may be removed by decision of the court, and the hearing of the case shall be continued in his absence. However, the sentence shall be read in the presence of the defendant, or shall be communicated to him immediately after it has been pronounced.

If the prosecutor or defense counsel refuses to obey the instructions of the presiding judge, the latter warns them. If the above-mentioned persons persist in refusing to obey the instructions of the presiding judge, the hearing of the case may be postponed by decision of the court if it is impossible to replace

the person in question without prejudice to the case. At the same time, the court reports the matter to the higher prosecutor, the presidium of the college of advocates, or the social organization, as may be appropriate.

In the event of disturbance of order or refusal to obey the instructions of the presiding magistrate on the part of a civil plaintiff, civil defendant, injured party, or their representatives, such persons may be removed from the courtroom by decision of the court.

Under similar circumstances, other persons present in the courtroom may be removed by order of the presiding judge. Also, they may be fined by the court in an amount not to exceed 100 rubles.

Article 264. The minutes of the court sitting.

The minutes of the court sitting shall indicate: the time and place of the sitting, and the time of commencement and completion; the designation and composition of the court; the secretary, the interpreter, the prosecutor, the defense counsel, the defendant, the injured party, the civil plaintiff, the civil defendant, the representatives of the two-last named, and all other persons summoned by the court; the case being heard; information on the identity of the defendant; the measure of restraint; the acts of the court in the order in which they took place; the requests and petitions of persons participating in the case; decisions issued by the court without retiring to chambers; the explanation to persons participating in the case relative to their rights and obligations; the detailed content of testimony; questions addressed to the expert, and his answers; the results of examinations conducted in the courtroom and of other actions for the gathering of evidence; those facts which participants in the case have asked to be certified in the minutes; instances of disturbing the order in the courtroom, if such have occurred, and the identity of the person causing the disturbance; a summary of the pleadings and the final statement of the defendant; the pronouncement of sentence and an explanation of the procedure and time limits for appealing it.

The minutes of the court sitting shall be prepared and signed no later than three days after the sitting has ended.

The minutes shall be signed by the presiding judge and the court secretary.

The presiding judge is required to assure that the participants in the proceedings have an opportunity to familiarize themselves with

with the minutes.

Article 265. Remarks on the minutes of the court sitting.

Within three days after the signing of the minutes, the prosecutor, defense counsel, the defendant, the injured party, civil plaintiff, civil defendant, and their representatives may submit their remarks on the minutes.

Article 266. Considering the remarks on the minutes of the court sitting.

The remarks are considered by the presiding judge, who if he is in agreement with the remarks, attests their correctness and appends them to the minutes of the sitting.

If the presiding judge is not in agreement with the remarks he submits them to the consideration of the court in executive session. The presiding judge and at least one of the people's assessors shall be among the judges examining the case. Where necessary, those persons who have submitted remarks on the minutes are called in.

As a result of considering the remarks, the court makes a reasoned decision certifying their correctness or rejecting them. The remarks on the minutes and the decision of the court are appended to the minutes of the court sitting.

Chapter Twenty-Two

The Preparatory Part of the Court Sitting

Article 267. Opening the sitting.

The presiding judge, at the time scheduled for hearing the criminal case, opens the sitting and announces what case is to be heard.

Article 268. Verifying presence in the courtroom.

The secretary reports on the presence in the courtroom of the prosecutor, the public prosecutor, the defendant, defense counsel, the public defender, the injured party, the civil plaintiff, the civil defendant, and their representatives, the interpreter, the witnesses, and the experts, and states the reasons for the absence of those who have not appeared.

Article 269. Informing the interpreter as to his obligations.

The presiding judge explains to the interpreter his obligation to interpret for the court the testimony and requests of participants in the case who do not speak the language in which the proceedings are being conducted, and to interpret for the latter the gist of the testimony, requests, documents read in court, the instructions of the presiding judge, and the decisions of the court.

The presiding judge warns the interpreter as to his liability under Article 181 of the Criminal Code RSFSR for deliberately false interpretation.

Article 270. Removing witnesses from the courtroom.

Witnesses who appear before the time when they are to be questioned are moved from the courtroom. The presiding judge takes steps to ensure that witnesses who have been questioned by the court do not communicate with witnesses who have not yet been questioned.

Article 271. Establishing the identity of the defendant and whether he has been provided in advance with a copy of the indictment.

The presiding judge establishes the identity of the defendant, ascertaining his last name, first name, and patronymic; the year, month, day, and place of birth; his domicile, occupation, education, and family status. The presiding judge then asks the defendant whether he has been provided with a copy of the documents specified in Article 237 of the present Code and, if so, when he received them.

If the above documents were not provided by the time specified in Article 237 of the present Code, hearing of the case shall be postponed.

Article 272. Announcing the composition of the bench and explaining the right to challenge.

The presiding judge announces the composition of the bench and states the identity of the prosecutor and defense counsel, together with that of the secretary, expert, and interpreter, and explains to the defendant and other participants in the trial their right to challenge the bench or any one of the judges, the prosecutor, the secretary, the expert, or the interpreter.

If a supernumerary people's assessor is present in the courtroom, the presiding judge announces this fact. The supernumerary people's

assessor may also be challenged.

The question of the challenges presented is settled in accordance with the rules prescribed by articles 61-63 and 65-67 of the present Code.

Article 273. Informing the defendant as to his rights.

The presiding judge informs the defendant as to his rights at the trial as prescribed by Article 46 of the present Code.

Article 274. Informing the injured party, the civil plaintiff, and the civil defendant as to their rights.

The presiding judge informs the injured party, the civil plaintiff, the civil defendant, and their representatives as to the rights at the trial as prescribed by articles 53-55 of the present Code, respectively. In cases involving crimes enumerated in articles 112, 130 (first part), and 131 of the Criminal Code RSFSR, if no preliminary investigation or police inquiry has been conducted on them, the injured party is also informed as to his right to reconciliation with the defendant.

Article 275. Informing the expert as to his rights and obligations.

The presiding judge informs the expert as to his rights and obligations as prescribed in Article 82 of the present Code, and warns him as to his liability for giving a deliberately false conclusion, and for refusal to give a conclusion, under articles 181 and 182 of the Criminal Code RSFSR.

Article 276. The submission and disposition of petitions.

The presiding judge asks the prosecutor, the defendant and his counsel, the injured party, the civil plaintiff, the civil defendant, or their representatives whether they have any requests regarding the summoning of new witnesses and experts or demanding the production of material evidence and documents. A person making a request is required to show precisely what circumstances are to be established by the requisite additional evidence.

The court, having heard the opinion of the other participants in the trial, shall consider each petition submitted and either grant it, if the circumstances to be elucidated are relevant to the case, or issue a reasoned decision refusing to grant the request which has been made.

The court's refusal to grant a petition shall not prejudice the right of the person whose request was refused to make it again, depending upon the course of the judicial investigation.

The court shall have the right, irrespective of whether any such request was made, to issue a decision summoning new witnesses, ordering expert analysis, demanding the production of documents and other evidence.

Article 277. Settling the question as to the possibility of hearing a criminal case in the absence of any of the persons participating in the case.

In the event of a failure to appear on the part of any of the participants in the proceedings, or on the part of a witness or expert, the court shall hear the opinion of the defendant, his counsel, the injured party, the civil plaintiff, the civil defendant, or their representatives, and the conclusion of the prosecutor as to the possibility of hearing the case, and shall issue a decision to continue the hearing or to postpone it.

Chapter Twenty-Three

The Judicial Investigation

Article 278. Beginning the judicial investigation.

The judicial investigation begins with the reading of the indictment. If the charges have been changed in an executive session of the court, the decision of the executive session is also read.

If there has been no police inquiry or preliminary investigation of the case, the judicial investigation begins with a reading of the statement of the injured party.

The presiding judge asks each defendant whether he has understood the charge, and where necessary explains the gist of the charge to the defendant and asks whether he pleads "guilty." If the defendant so desires, the presiding judge gives him the opportunity to explain the reasons for his answer.

Article 279. Establishing the procedure for examining the evidence.

After having questioned the defendants as to whether they plead "guilty" or "not guilty," the court hears the proposals of the prosecutor, the defendant, defense counsel, the injured party, the

civil plaintiff, the civil defendant, and their representatives as to the order to be followed in questioning the defendants, injured parties, witnesses, and experts, and issues a decision as to the procedure for examining the evidence.

Article 280. Questioning the defendant.

The interrogation of the defendant begins with a suggestion by the presiding judge that the former testify as to the charge and the circumstances of the case which are known to him. He is then questioned by the judges, the prosecutor, the injured party, the civil plaintiff, the civil defendant, or their representatives, and by defense counsel. Following this, the defendant may be questioned by other defendants and their counsel. The presiding judge shall rule out questions which are not relevant to the case.

The judges shall have the right to question the defendant at any time during the judicial investigation.

Interrogation of one defendant in the absence of another defendant is permitted only by decision of the court in exceptional cases when required by the interests of establishing the truth. In such cases, when the defendant has returned to the courtroom, the presiding judge informs him of the gist of the testimony given in his absence and gives him an opportunity to cross-examine the defendant who was questioned in his absence.

The defendant may, with the permission of the presiding judge, give testimony at any time during the judicial investigation.

Article 281. Reading the testimony of the defendant.

The reading in court of the testimony given by the defendant during the police inquiry or preliminary investigation may take place under the following circumstances:

- 1) when there are substantial contradictions between this testimony and the testimony given in court;
- 2) when the defendant refuses to testify in court;
- 3) when the case is being considered in the absence of the defendant.

These rules also apply to cases of reading the testimony given by the defendant in court.

Article 282. Warning a witness of his liability for the refusal or avoidance of giving testimony, and for giving deliberately false testimony.

Before beginning questioning the presiding judge establishes the identity of the witness, explains to him his duty and obligation as a citizen to tell accurately everything he knows about the case, and warns him of his liability for refusing to give testimony or for giving deliberately false testimony.

The witness is required to sign a statement certifying that his obligations and liability have been explained to him. The signed statement is appended to the minutes of the court sitting.

To witnesses who are under 15 years of age, the presiding judge explains the importance of complete and accurate depositions. No warning as to liability for refusal to testify or the giving of deliberately false testimony is given to such witnesses, and no signed statement is obtained from them.

Article 283. Questioning witnesses.

Witnesses are questioned separately and in the absence of other witnesses who have not yet been questioned.

The presiding judge ascertains the relationship of the witness to the defendant and the injured party, and suggests that the witness relate everything he knows about the case. Then the witness is questioned by the judges and the prosecutors, and also by the injured party, the civil plaintiff, the civil defendant, and their representatives, and by defense counsel and the defendants. If the witness has been called at the request of one of the participants in the trial, this participant questions the witness first. The presiding judge rules out questions which are not relevant to the case.

The judges shall have the right to question a witness at any time during the judicial investigation.

Witnesses who have been questioned shall remain in the courtroom and may not leave before completion of the judicial investigation without the permission of the court.

The presiding judge shall permit witnesses who have been questioned to leave the courtroom before completion of the judicial investigation only provided that the opinions of the prosecutor, the defendant, defense counsel, the injured party, the civil plaintiff, the civil defendant, and their representatives have been heard.

Article 284. The utilization of written notes and documents by the witness.

During questioning in court, a witness may make use of written notes in those cases when his depositions refer to figures and other data which it is difficult to memorize. Such notes shall be made available to the court upon its request.

A witness is permitted to read documents in his possession referring to testimony he has given. These documents are made available to the court and may be appended to the file by decision of the court.

Article 285. Questioning a witness who is a minor.

When questioning a witness who is under the age of 14 years and, at the discretion of the court, when questioning a witness between the ages of 14 and 16 years, a teacher shall be called in. Where necessary, the parents or other legal representatives of the minor are also called. With the permission of the presiding judge, these persons may question the witness.

When required by the interests of establishing the truth, a witness who is a minor may, by decision of the court, be questioned in the absence of the defendant. When the defendant has returned to the courtroom he shall be informed of the depositions of the witness and given an opportunity to question the witness.

A witness who is below the age of 16 years shall be excluded from the courtroom when his interrogation is completed, except for those cases where the court deems the continued presence of such a witness to be necessary.

Article 286. Reading the testimony of a witness.

The reading in court of the testimony given by a witness during the police inquiry or preliminary investigation may take place in the following circumstances:

- 1) when there are substantial contradictions between this testimony and the testimony given by the witness in court;
- 2) when the witness is absent from the proceedings for reasons making it impossible for him to appear in court.

This rule also applies to cases of reading the testimony given by a witness in court.

Article 287. Expert examination in court.

The expert participates in the examination of those circumstances of the case associated with the subject of expert examination.

He may question the defendant, the injured party, and witnesses concerning circumstances relevant to giving a conclusion.

With respect to elucidating all circumstances relevant to giving a conclusion, the presiding judge suggests that the prosecutor, defense counsel, the defendant, the injured party, the civil plaintiff, the civil defendant, and their representatives submit questions to the expert in writing. The questions which have been submitted shall be read aloud, and the opinion of the participants in the proceedings and the conclusion of the prosecutor with respect to the questions shall be heard. The court considers these questions, rules out those which are not relevant to the case or to the competence of the expert, and also formulates new questions, after which the expert prepares a conclusion.

The conclusion is given by the expert in writing, is read aloud by him in court, and is appended to the file together with the questions. The expert shall have the right to include in his opinion conclusions referring to circumstances of the case coming within his competence with respect to which he had not been questioned.

Where it is necessary to make available to the expert, specimens for comparative examination, the rules of Article 186 of the present Code shall be applied.

Article 289. Questioning the expert.

After the expert has read his conclusion aloud, questions may be asked of him in order to elucidate or supplement the conclusion he has given.

The expert is first questioned by the judges and then by the prosecutor, the injured party, the civil plaintiff, the civil defendant, and their representatives, defense counsel, and the defendant.

Article 290. Supplementary or repeated expert examination.

In those cases specified in Article 81 of the present Code, the court may, by a reasoned decision, order supplementary or repeated expert examination.

The supplementary or repeated expert examination shall be conducted in accordance with the rules prescribed by articles 288 and 289 of the present Code.

Article 291. The examination of material evidence.

The material evidence present in the courtroom and introduced during the sitting of the court shall be examined by the court and made available to the prosecutor, the defendant, defense counsel, the injured party, the civil plaintiff, the civil defendant, and their representatives. The examination of material evidence may be made at any time during the judicial investigation either on the initiative of the court or at the request of participants in the proceedings. Where necessary material evidence may be made available to witnesses and to the expert. Persons introducing material evidence may call the attention of the court to various circumstances associated with the examination.

The examination of material evidence which cannot be brought into the courtroom is effected, where necessary, by the entire bench at the place where the evidence is located, in accordance with the rules prescribed by part one of the present article.

Article 292. Reading documents aloud.

Documents appended to the file or introduced at the trial, provided circumstances relevant to the case are set forth or attested therein, shall be read aloud. Documents may be read aloud at any time during the judicial investigation, either wholly or in part, and either at the initiative of the court or at the request of the prosecutor, the defendant, defense counsel, the injured party, the civil plaintiff, the civil defendant, and their representatives. Documents introduced at the trial may by decision of the court be appended to the file.

Article 293. The examination of places and premises.

If the court deems it necessary to examine a particular place or premises, the examination is made by the entire bench in the presence of the prosecutor, the defendant, defense counsel, the injured party, the civil plaintiff, the civil defendant, and their representatives. Where necessary the examination is made in the presence of witnesses and an expert.

Upon arrival at the place of examination the presiding judge announces that the sitting of the court is being continued, and the court proceeds to the examination. In this connection questions may be addressed to the defendant, the injured party, the witnesses, and the expert in connection with the examination.

Those persons present at the examination may call the attention

of the court to everything which, in their opinion, might facilitate elucidation of the circumstances of the case.

Article 294. Completion of the judicial investigation.

After considering all of the evidence, the presiding judge asks the prosecutor, the defendant, defense counsel, the injured party, the civil plaintiff, the civil defendant, and their representatives whether they desire to supplement the judicial investigation and, if so, with what in particular. If a request is made to supplement the judicial investigation the court considers the request and makes a decision upon it.

When the requests have been acted upon and the necessary investigative actions have been performed, the presiding judge declares the judicial investigation completed.

Chapter Twenty-Four

The Pleadings and the Final Statement of the Defendant

Article 295. The content of, and procedure for, pleadings in court.

Upon completion of the judicial investigation the court begins its hearing of the pleadings. The pleadings consist of the speeches of the prosecutors, the civil plaintiff, the civil defendant, or their representatives, the defense attorneys, and the defendant, if defense counsel is not participating in the courtroom proceedings.

In cases involving the crimes specified in articles 112, 130 (first part), and 131 of the Criminal Code RSFSR, the injured party or his representatives also participate in the pleadings. In cases where countercharges are joined in one proceeding, the order in which the pleadings are to be heard is decided by the court.

The order for hearing the speeches of the state and public prosecutors, and the order for hearing the speeches of defense counsel and the public defender, is fixed by the court at their suggestion.

Participants in the pleadings shall not have the right to refer to evidence which has not been examined at the trial. Where it is necessary to introduce new evidence, they may petition for resumption of the judicial investigation.

The court shall not assign a precise limit to the length of the

pleadings, but the presiding judge shall have the right to interrupt participants in the pleadings if they are discussing circumstances not relevant to the case being tried.

Article 296. Rebuttals.

When speeches have been made by all of the participants in the pleadings, they may speak once more by way of rebuttal to something said in the speeches. The right of final rebuttal is always reserved for the defense counsel and the defendant.

Article 297. The final statement of the defendant.

When all of the pleadings have been heard, the presiding judge gives the defendant an opportunity to make a final statement. It is prohibited to address questions to the defendant during his final statement.

The court shall not assign a time limit to the final statement of the defendant, but the presiding judge shall have the right to interrupt the defendant when he discusses circumstances which are obviously irrelevant to the case.

If in the course of his final statement the defendant gives information on new circumstances of substantial importance to the case, the court is required to resume the judicial investigation.

Article 298. Retirement of the court to the consultation room for the formulation of the judgment.

When the final statement of the defendant has been heard, the court immediately retires to the consultation room to formulate the judgment, an announcement of which fact is made by the presiding judge to those present in the courtroom.

Chapter Twenty-Five

The Formulation of the Sentence

Article 300. Passing sentence in the name of the RSFSR.

The sentence of the court is passed in the name of the Russian Soviet Federative Socialist Republic.

In accordance with Article 43 of the Basic Principles of Court

Procedure for the USSR and the Union Republics, military tribunals pronounce sentence in the name of the Union of Soviet Socialist Republics.

Article 301. The legality and substantiation of the sentence.

The sentence of the court shall be legal and well-founded.

The court shall found its sentence only on that evidence which was examined at the trial.

The sentence of the court shall be reasoned.

Article 302. Privacy of the consultation among the judges.

The sentence shall be formulated by the court in the consultation room. Only those judges constituting the bench for the case in question shall be allowed in the consultation room while the consultation among the judges is taking place. The presence of any other persons is prohibited.

The court shall have the right to recess the consultation at nightfall. The judges shall not make public the discussions which have taken place during the consultation.

Article 303. Questions decided by the court in formulating the sentence.

In formulating the sentence in the consultation room, the court decides the following questions:

- 1) whether the act with which the defendant is charged took place;
- 2) whether the act contained the elements of a crime and, if so, what criminal statute is applicable;
- 3) whether the defendant committed the act;
- 4) whether the defendant is guilty of having committed the crime;
- 5) whether the defendant should be punished for the crime he has committed;
- 6) what particular punishment should be assigned to the defendant, and whether the defendant should serve the sentence;
- 7) whether the civil claim should be satisfied, in favor of whom, and in what amount, and whether restitution should be made for material damage if no civil claim was presented;
- 8) what disposition to make of the material evidence;
- 9) who should pay the court costs, and in what amount;
- 10) concerning the measure of restraint with respect to the

defendant.

If the defendant has been charged with the commission of several crimes, the court decides the questions enumerated in items 1-6 of the present article with respect to each crime individually.

If several defendants were charged with the commission of the crime, the court decides these questions with respect to each defendant individually.

Article 304. Considering the question of the custody of persons convicted conditionally and administering educational work for them.

In the event of a conditional conviction, the court decides, in accordance with the procedure prescribed by law, who shall have custody of the person who has been conditionally convicted and administer educational work for the latter.

If a petition for conditional conviction has been filed by a social organization or collective of workers, employees, or kolkhoz farmers at the place of employment of the convicted person, the court may release the conditionally convicted person to such organization or collective for reeducation and reformation.

Article 305. Considering the question of the responsibility of the defendant.

In those cases where a question as to the responsibility of the defendant arose during the police inquiry, the preliminary investigation, or the trial, the court is required, in formulating the sentence to consider the question once again. If it is acknowledged that the defendant was in an irresponsible state at the time the act was committed, or that after commission of the crime he became mentally ill and was unable to account for his actions or to control himself, the court makes a decision in accordance with the procedure set forth in Chapter Thirty-Three of the present Code.

Article 306. The procedure for the consultation among the judges.

Formulation of the sentence is preceded by a consultation among the judges. The presiding judge raises the questions to be decided by the court in the order indicated in Article 303 of the present Code. Each question shall be posed in such a way that it must be answered either in the affirmative or in the negative.

All questions shall be decided by a simple majority vote. None of the judges shall have the right to refrain from voting.

The presiding judge casts his vote last.

Article 307. The dissenting opinion of a judge.

A presiding judge or people's assessor who dissents shall have the right to set forth his dissenting opinion in writing in the consultation room. The dissenting opinion is not read aloud when sentence is pronounced, but it is appended to the file.

Article 308. Resumption of the judicial investigation or transmittal of the criminal case for additional investigation.

If, during the discussion in the consultation room of the questions enumerated in articles 303-305 of the present Code, the court deems it necessary to elucidate some circumstance relevant to the case, it resumes the judicial investigation, issuing a decision to that effect. Upon completion of the judicial investigation the court again hears pleadings and the final statement of the defendant.

If the court in camera arrives at the conclusion that it is necessary to transmit the case for supplementary investigation, it issues a reasoned decision to that effect.

Article 309. Types of sentence.

The sentence may pronounce the defendant either "guilty" or "not guilty."

A sentence pronouncing a person "guilty" may not be founded on presumptions, and shall be formulated only providing that in the course of the trial the defendant was proven guilty of committing the crime. If by the time the case was tried in court the act had lost its socially dangerous character, or if the person who committed it had ceased to be socially dangerous, the court formulates a judgment of "guilty" without assigning punishment.

A judgment of "not guilty" is formulated if:

- 1) the event of the crime was not established;
- 2) the act of the defendant did not contain the elements of a crime;
- 3) the participation of the defendant in the commission of the crime was not proved.

Article 310. Settling the civil claim in formulating the sentence.

In formulating a judgment of "guilty" the court, depending upon the amount of the civil claim and the extent to which it was

substantiated, either certifies the claim presented, wholly or in part, or rejects it.

In exceptional cases where it is impossible to calculate the amount of the civil claim in detail without having to adjourn the hearing of the case, the court may recognize the right of the civil plaintiff to the satisfaction of his claim, and transmit the question of its amount for consideration by way of civil procedure.

In formulating a judgment of "not guilty" the court:

- 1) refuses to satisfy the civil claim, if the event of the crime has not been established, or of the participation of the defendant in the commission of the crime has not been proved;
- 2) dismisses the claim without considering it, if the defendant has been found "not guilty" for lack of the elements of a crime.

Article 311. Securing a civil claim.

If the civil claim is to be satisfied the court shall have the right, pending the entry of the sentence into legal force, to order that measures be taken to secure such a claim, provided such measures have not been taken already.

Article 312. Drawing up the sentence.

When the questions enumerated in articles 303-305 of the present Code have been decided, the court prepares to draw up the sentence. It must be drawn up in clear, understandable expressions and consist of an introductory, descriptive, and resolutive part.

The sentence is set forth in the language in which the trial was conducted.

The sentence must be written by one of the judges who participated in its formulation, and signed by all of the judges. A judge with a dissenting opinion shall also sign the sentence.

Corrections in the sentence shall be annotated, and the annotations shall be signed by all of the judges in the consultation room before sentence is pronounced.

Article 313. The introductory part of the sentence.

The introductory part of the sentence states:

- 1) that the sentence is passed in the name of the RSFSR or, in those cases specified in the second part of Article 300 of the

present Code, in the name of the USSR;

2) the time and place of formulation of the sentence;

3) the designation of the court which formulated the sentence and the name of the court secretary, the prosecutor, and the defense counsel;

4) the first name, patronymic, and last name of the defendant; the year, month, day, and place of his birth; his domicile, place of employment, occupation, education, family status, and other information on the identity of the defendant which is relevant to the case;

5) the criminal statute applicable to the crime with the commission of which the defendant was charged.

Article 314. The descriptive part of the sentence.

The descriptive part of a sentence pronouncing the defendant "guilty" shall contain a description of the criminal act considered to have been proved, showing the place, time, and method of its commission, the character of the guilt, motives, and consequences of the crime; the evidence on which the conclusions of the court were based and the reasons for which other evidence was ruled out; indications as to the circumstances mitigating or aggravating the guilt; and if a part of the charge was deemed unfounded, the reasons for such a finding. The court is also required to give its reasons for changing the charges, if this was done in court, and where necessary the reasons relative to the selected measure of punishment. Moreover, reasons must be given for exempting the defendant from punishment, for applying conditional conviction, and for assigning punishment below the lower limit prescribed by the criminal statute for the crime in question, or a change to another and less severe type of punishment. If there is more than one defendant in the case, the above information shall be given for each of the defendants individually.

The descriptive part of a sentence pronouncing the defendant "not guilty" shall set forth the substance of the charges on which the accused was arraigned; the circumstances of the case established by the court; the evidence serving as the basis for exculpating the defendant, showing the reasons why the court rejected the evidence on which the charge was founded. Language casting doubt on the innocence of the exculpated person shall not be included in a judgment of "not guilty."

The descriptive part of both a judgment of "guilty" and a judgment of "not guilty" shall set forth the reasons underlying the court's decision with respect to the civil suit or restitution for material damage caused by the crime.

Article 315. The resolutorial part of a judgment of "guilty."

The resolutorial part of a judgment of "guilty" shall show:

- 1) the last name, first name, and patronymic of the defendant;
- 2) the decision declaring the defendant guilty;
- 3) the criminal statute under which the defendant was found guilty;
- 4) the kind and amount of punishment assigned to the defendant for each crime of which he was proved guilty; the final measure of punishment to be imposed in accordance with articles 40 and 41 of the Criminal Code RSFSR;
- 5) the duration of the probationary period, and the person responsible for custody of the convicted person, if conditional conviction has been employed;
- 6) the decision to take previous confinement into account if pending formulation of the sentence the defendant was confined under guard by way of a measure of restraint or detention;
- 7) the decision as to the measure of restraint with respect to the defendant pending entry of the sentence into legal force.

If charges were preferred against the defendant under several articles of the criminal law, the resolutorial part of the sentence shall show accurately under which articles the defendant was found "not guilty" and under which he was convicted.

If the defendant is exempted from punishment, this fact shall be stated in the resolutorial part.

In all cases the punishment must be so designated that in the execution of the sentence no doubts arise as to the kind and amount of punishment assigned by the court.

In those cases specified in Article 36 of the Criminal Code RSFSR, the resolutorial part of the sentence shall set forth the decision of the court to file with the appropriate governmental organs, when the sentence enters into legal force, a request that the defendant be dispossessed of orders, medals, and honoray, military, or other titles.

Article 316. The resolutorial part of a judgment of "not guilty."

The resolutorial part of a judgment of "not guilty" shall state:

- 1) the last name, first name, and patronymic of the defendant;
- 2) the decision declaring the defendant "not guilty" ;

3) that the measure of restraint, if such was employed, has been rescinded;

4) that the measure for securing the confiscation of property, if such a measure was employed, has been rescinded.

Article 317. Other questions to be decided in the resolutorial part of the sentence.

In addition to the questions enumerated in articles 315 and 316 of the present Code, respectively, the resolutorial part of both a judgment of "guilty" and a judgment of "not guilty" shall set forth:

- 1) the decision on the civil claim presented, or the decision on restitution for damage;
- 2) the decision on the question of material evidence;
- 3) an indication as to the distribution of the court costs;
- 4) an indication as to the procedure and time limits for appealing and protesting the sentence by way of cassation.

Article 318. Pronouncing sentence.

When the sentence has been signed, the court returns to the courtroom and the presiding judge or a people's assessor reads the sentence aloud. All persons present in the courtroom, not excepting the bench, shall stand while sentence is being pronounced.

If the sentence is drawn up in a language which the defendant does not understand, immediately after pronouncement the sentence shall be read by the interpreter in the language of the defendant, or in another language that he understands.

Article 319. Release of a defendant held under guard.

If the defendant is found "not guilty," or if no punishment is assigned to him, or if he is exempted from punishment by way of suspension, or if he is assigned punishment not involving deprivation of freedom, in the event that the defendant is being detained under guard he is immediately released in the courtroom.

Article 320. Furnishing a copy of the sentence to the convicted person or the exculpated person.

No later than three days after pronouncement of sentence a copy of the sentence shall be furnished to the convicted person or the exculpated person.

Article 321. The special decision of the court.

At the same time that it formulates the sentence, the court issues a special decision, in cases where there are grounds for such, calling the attention of heads of institutions, enterprises, organizations, and other persons to the causes and conditions facilitating the commission of the crime, and demanding that appropriate measures be taken.

A copy of the special decision is sent to the appropriate institution, enterprise, organization, or official, who within one month's time shall make a report to the court as to the measures taken.

The court shall have the right to issue a special decision calling the attention of the appropriate officials to illegalities permitted in the course of the police inquiry or preliminary investigation.

The court shall have the right to issue a special decision on the basis of the materials of the trial calling the attention of social organizations and workers' collectives to the improper behavior of individual citizens at the trial, or in their personal lives, or to the fact that they have failed in their public duty. Where necessary a copy of the special decision may be sent to a comrades' court.

The special decision is signed by all of the judges and may, at the discretion of the court, be read in court.

Article 322. Payment for the work of an advocate who was appointed by the court.

If the advocate was appointed to participate in the case, the court, at the same time that it formulates the sentence, shall issue a decision as to the amount of remuneration the defendant must pay to the legal aid office.

Chapter Twenty-Six

The Procedure for Imposing Fines and Forfeits

Article 323. The procedure for appealing and protesting the sentence.

Forfeits, in those cases specified in articles 57, 94, and 394, and fines, in those cases specified in Article 263 of the present Code, *[sic]*

are imposed by the court having jurisdiction over the criminal case in question. If the violations in question were committed in the courtroom, the decision imposing the forfeit or fine is issued by the court hearing the case at that sitting.

In all other cases the question of imposing forfeits and fines is decided by the court in executive session, to which the person upon whom the fine or forfeit may be imposed is summoned. The failure of the person to appear without good and sufficient reason does not serve to obstruct consideration of the case.

The record prepared by the person conducting the police inquiry, by the investigator, or by the prosecutor, or an excerpt from the minutes of the trial, in which the circumstances of the violation are set forth, is read aloud at the executive session. The court then hears the explanations of the person who committed the violation, and the conclusion of the prosecutor, if he participated in the case, and issues a decision.

In issuing a decision imposing a forfeit upon an interpreter, guarantor, or person who has disturbed the order in the courtroom, the court shall have the right to defer execution, or arrange for payment in installments, for a period not to exceed three months.

Article 324. The procedure for transferring bail money to the state.

When the court decides the question of transferring bail money to the state as a result of the failure of the accused to appear for the investigation or in court, the rules of Article 323 of the present Code shall apply.

SECTION FOUR

THE PROCEEDINGS AT THE APPELLATE LEVEL

Chapter Twenty--Seven

Appealing and Protesting Court Sentences, Decisions, and Rulings Which Have Not Yet Become Final

Article 325. The right to appeal or protest a sentence by way of cassation.

The defendant, his counsel and legal representative, and also the

injured party and his representative, shall have the right to appeal the sentence of the court by way of cassation.

The prosecutor is required to protest, by way of cassation, every illegal or unfounded sentence.

The civil plaintiff, civil defendant, and their representatives shall have the right to appeal the sentence insofar as it concerns the civil suit.

A person exculpated by the court shall have the right to appeal, under cassational procedure, a sentence pronouncing him "not guilty" insofar as the reasons and grounds for the exculpation are concerned.

Sentences of the Supreme Court RSFSR are not subject to appeal or protest under cassational procedure.

Article 326. The procedure for appealing and protesting a sentence.

Sentences which have not yet entered into legal force may be appealed and protested under cassational procedure as follows:

- 1) the sentences of rayon (municipal) people's courts shall be appealed or protested to the Supreme Court of the ASSR, to kray, oblast, or municipal courts, to the court of the autonomous oblast, or to the court of the national okrug, as may be appropriate;
- 2) sentences of supreme courts of ASSR's, kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs, shall be appealed or protested to the Supreme Court RSFSR;
- 3) sentences of military tribunals shall be appealed or protested in accordance with the procedure established by articles 20 and 21 of the Decree on Military Tribunals.

Cassational appeals and protests are filed through the court which has handed down the sentence. However, the filing of an appeal or protest directly with the appellate court does not constitute an obstacle to consideration of the appeal or protest.

A sentence passed after the rehearing of a case may be appealed or protested in accordance with the general procedure.

Article 327. Notification of the filing of protests and appeals.

Notification of the filing of a protest or appeal is sent by the court of first instance to the convicted person, the exculpated person, and other participants in the proceedings whose interests are affected by the appeal or protest.

A convicted person, exculpated person, and other participants in the proceedings shall have the right to familiarize themselves with the protests and appeals filed with the court, and to file their objections thereto.

The convicted person or exculpated person shall be provided with a copy of the protest or appeal filed by the injured party, if he so requests.

Objections filed against the appeal or protest are appended to the dossier or forwarded by way of supplement to the file within one day.

Article 328. The time limits for appealing and protesting sentences.

Appeals and protests against sentences of a court of first instance may be filed within seven days from the time sentence was pronounced or, when filed by a convicted person, within the same period from the time he was provided with a copy of the sentence.

During the period of time fixed for appealing the sentence the court shall not be required to furnish the file upon demand. The prosecutor, the convicted person, the exculpated person, their counsel and legal representatives, the injured party, the civil plaintiff, the civil defendant, and their representatives shall have the right to familiarize themselves in court with the proceedings in the case and with the appeals and protests which have been filed.

An appeal or protest filed after expiration of the time limit shall be returned to the person who filed the appeal or protest.

Additional cassational appeals and protests and objections thereto in writing may be filed with the appellate court prior to commencement of review of the case.

Article 329. The procedure for extending the time limit for filing an appeal or protest.

If the time limit for the filing of an appeal or protest against a sentence has been allowed to lapse for good and sufficient reason, persons entitled to file the cassation appeal or protest may petition the court which formulated the sentence to extend the time limit. The question of extending the time limit is decided in executive session of the court, which shall have the right to summon the person who filed the petition for purposes of giving explanations.

A decision of the court refusing to extend the time limit

when it has been allowed to lapse may be appealed or protested under standard procedure to the higher court, which shall have the right to extend the time limit and consider the case with respect to an appeal or protest touching a matter of substance.

Article 330. The consequences of filing an appeal or protest.

The lodging of a cassational appeal or protest against a sentence serves to stay the execution of the sentence.

Upon the expiration of the period established for filing an appeal or protest, the court which has formulated the sentence transmits the file, together with those appeals and protests which have been filed, to the appellate court.

Article 331. Appealing and protesting a decision of the court of first instance and a ruling of a judge.

A decision of the court of first instance, or a ruling of the judge, on a criminal case may be made the subject of a special appeal or protest by persons enumerated in Article 325 of the present Code, with the following exceptions:

1) decisions of the court imposing a fine or forfeit in the cases specified by the present Code, or initiating criminal proceedings under Article 256 of the present Code, may be appealed by the persons with respect to whom they were issued, or protested by the prosecutor. A judge's ruling to initiate proceedings may be appealed by the injured party or protested by the prosecutor;

2) decisions of the court and rulings of a judge issued in those cases specified in articles 227, 230, 232, 234, 255, 308 (second part), and 321 of the present Code may not be appealed, but they may be protested by the prosecutor;

3) decisions of the court and rulings of a judge issued in those cases specified in articles 43, 44, 223, 247, 250, 257, 260, 263 (except for decisions imposing a fine), 266, 276, 277, 279, 280, 285, 288, 308 (first part), 362-365, 367, 370, 401, and 402 of the present Code may not be appealed or protested.

In the case of an appeal or protest filed against a decision issued in the course of a trial terminating in the formulation of a sentence, the file shall be transmitted to the appellate court only upon expiration of the period established for appealing the sentence.

The rules prescribed by Chapter Twenty-Seven and Chapter Twenty-Eight of the present Code relative to time limits, procedure for filing, and consideration of cassational appeals and protests

also apply to the time limits, procedure for filing, and consideration of special appeals and special protests.

Chapter Twenty-Eight

Reviewing Cases on the Basis of Cassational Appeals and Protests

Article 332. Verifying the legality and substantiation of the sentence.

In reviewing a case by way of cassation the court verifies the legality and substantiation of the sentence on the basis of the materials in the case and supplementary materials presented. The court is not limited to the arguments contained in the cassational appeal or protest but verifies the case in its entirety and with respect to all convicted persons, including those who have filed no appeal and with respect to persons who have not lodged a cassational protest. In the event of disclosure of infringements of the law making it necessary to set aside the sentence or to change it, the court shall be guided by the rules of articles 339-342 of the present Code.

Article 333. The time limits for reviewing a criminal case at the appellate level.

The Supreme Court of an ASSR, a kray, oblast, or municipal court, the court of an autonomous oblast or the court of a national okrug, or a military tribunal shall review cases received on the basis of a cassational appeal or protest no later than within ten days, and the Supreme Court RSFSR shall review such cases no later than within 20 days from the time of receipt.

Article 334. The open review of cases at the appellate level.

The appellate court reviews cases in open session, except for those cases enumerated in Article 18 of the present Code.

Article 335. Persons participating in the consideration of a case by way of cassation.

When a case is being reviewed by way of cassation the prosecutor gives his conclusion as to the legality and substantiation of the sentence. Defense counsel may participate in the sitting of a court reviewing a case by way of cassation.

The question as to the participation of a convicted person in the sitting of a court reviewing the case by way of cassation shall be decided by that court. In all cases, a convicted person or exculpated person who has appeared for the sitting of the court is permitted to give explanations.

The other persons named in Article 325 of the present Code may participate in the consideration of a case by way of cassation.

The fact that such persons, after having been duly notified of the day set for hearing the case, do not appear does not serve to prevent the case from being considered.

Article 336. Notification of the review of a case at the appellate level.

Persons who have filed cassational appeals shall be notified as to the day when the case is to be considered under cassational procedure by the Supreme Court of an ASSR, a kray, oblast, or municipal court, the court of an autonomous oblast, and the court of a national okrug.

Notification as to the day when a case is to be reviewed under cassational procedure by the Supreme Court of the ASSR is sent to those participants in the proceedings who so request in their cassational appeals, or in their objections to an appeal or protest.

Failure of the above-mentioned persons to appear after having been notified as to the day the case is to be considered, does not serve to prevent review of the case.

No later than three days prior to consideration of the case under cassational procedure, a notice as to the time the case will be considered shall be posted in the court.

Article 337. The introduction of new materials at the appellate level.

By way of confirming or disproving the arguments set forth in the appeal or protest, the persons enumerated in Article 325 of the present Code shall have the right to introduce additional materials into the appellate court, both prior to and during the consideration of the case, but not after the prosecutor has made his final statement.

Article 338. The procedure for hearing a case at the appellate level.

The presiding judge opens the hearing and announces what case is

to be considered. The presiding judge then verifies the presence of those who have appeared for the proceedings, after which the court decides as to the feasibility of considering the case. The presiding judge then announces the composition of the bench and the last names of the prosecutor and the interpreter, and asks those persons who have appeared for the hearing whether they have any challenges to present.

The presiding judge asks those who have appeared for the hearing whether they desire to submit any petitions. The court makes a ruling on any petitions submitted.

The review of the case begins with a report from one of the members of the court, who states the substance of the case and the arguments of the appeal or protest. If the case is being heard on the basis of a protest, the prosecutor explains the reasons for the protest, following the report. If additional materials are introduced, the presiding judge or a member of the court reads them aloud and makes them available, for purposes of familiarization, to the prosecutor and the persons named in Article 335 of the present Code, provided they are participating in the hearing.

Explanations are then offered by the convicted person or exculpated person, his counsel and legal representatives, the injured party, the civil plaintiff, and the civil defendant or their representatives, if they are participating in the hearing. When the explanations have been given, the court hears the final statement of the prosecutor, gives the convicted person or exculpated person and his counsel an opportunity to make additional explanations in a statement, and then retires to the consultation room to make a decision.

The courtroom procedure and the measures employed with respect to those who disturb order are governed by the rules of articles 262 and 263 of the present Code.

Prior to the opening of the hearing, the person who has filed an appeal or protest against the sentence shall have the right to withdraw his appeal or protest. A higher prosecutor shall have the right to withdraw a protest filed by a lower prosecutor.

Article 339. Making the decision.

As a result of reviewing the case by way of cassation, the court shall make one of the following decisions:

- 1) to leave the sentence unchanged, and to dismiss the appeal or protest;
- 2) to set aside the sentence and remand the case for a

new investigation or a new trial;

- 3) to set aside the sentence and terminate the proceedings;
- 4) to change the sentence.

In making its decision the court shall be guided by the requirements of articles 306, 307, and 312 of the present Code. The decision reached is immediately read aloud in the courtroom by the presiding judge or by a member of the court.

Article 340. The inadmissibility, at the appellate level, of increasing the penalty for the convicted person or applying to him a statute governing a more serious crime.

In reviewing a case by way of cassation the court may lighten the penalty assigned by the court of first instance, or apply a statute governing a less serious crime, but it shall not increase the penalty or apply a statute governing a more serious crime.

A sentence may be set aside owing to the necessity of applying a statute governing a more serious crime, or for insufficiently severe penalty, only in those cases when the prosecutor has filed a protest, or the injured party has lodged an appeal, on these grounds.

Article 341. Setting aside a sentence of exculpation.

A sentence of exculpation shall not be set aside except on protest of the prosecutor, appeal of the injured party, or appeal of the person exculpated by the court.

Article 342. The grounds for setting aside or changing a sentence.

The following constitute grounds for setting aside or changing a sentence when a case is reviewed by way of cassation:

- 1) one-sidedness or incompleteness of the police inquiry, the preliminary investigation, or the judicial investigation;
- 2) discrepancy between the conclusions of the court set forth in the sentence and the factual circumstances of the case;
- 3) substantial violation of the criminal procedural law;
- 4) incorrect application of a criminal statute;
- 5) disparity between the penalty assigned by the court, the seriousness of the crime, and the character of the convicted person.

Article 343. One-sidedness or incompleteness of the police inquiry, the preliminary investigation, or the judicial investigation.

A police inquiry, preliminary investigation, or judicial

investigation which has failed to elucidate circumstances whose disclosure might be of substantial importance in formulating the sentence, is considered to have been conducted in a one-sided or incomplete manner.

The police inquiry, preliminary investigation, or judicial investigation is considered to be one-sided or incomplete in any case, if:

- 1) persons whose testimony is materially relevant to the case were not questioned; expert examination was not made, when the making of such was mandatory according to the law; documents or material evidence of material relevance were not required to be produced;
- 2) there was no examination of the circumstances indicated in the decision of the court transmitting the case for additional investigation or retrial;
- 3) the information on the identity of the accused was not sufficiently well established.

Article 344. Discrepancy between the conclusions of the court set forth in the sentence and the factual circumstances of the case.

A sentence is considered not to correspond to the factual circumstances of the case, if:

- 1) the conclusions of the court are not substantiated by the evidence examined during the trial;
- 2) the court has failed to take into account circumstances which might substantially influence the conclusions of the court;
- 3) when there are conflicting proofs of material relevance to the conclusions of the court, the sentence does not show on what grounds the court accepted one kind of evidence and rejected the other;
- 4) the conclusions of the court set forth in the sentence contain substantial contradictions which have influenced, or might have influenced, the decision as to the guilt or innocence of the convicted person or the exculpated person, the correctness of application of the criminal statute, or the decision as to the measure of punishment.

Article 345. Substantial violation of criminal procedural law.

Those violations of the requirements of the articles of the present Code which, by means of nullifying or infringing the rights guaranteed by law to the participants in the proceedings when the case was being tried, or by other means, have prevented the court from examining the case in all its aspects, and which have influenced, or might have influenced, the formulation of a legal and well-founded sentence, are considered to be substantial violations of criminal

procedural law.

The sentence shall be set aside in any case, if:

- 1) in the presence of the grounds specified in Article 259 of the present Code, criminal proceedings were not terminated by the court;
- 2) the sentence was passed by an illegally constituted bench;
- 3) the case was tried in the absence of the defendant under circumstances such that his presence was required by law;
- 4) the case was tried without the participation of defense counsel under circumstances such that his presence was required by law;
- 5) there was violation of privacy of the consultation among the judges when the sentence was formulated;
- 6) the sentence was not signed by one of the judges;
- 7) the file does not contain the minutes of the trial.

Article 346. Incorrect application of a criminal statute.

The following constitute the incorrect application of a criminal statute:

- 1) the failure of the court to apply the statute which should have been invoked;
- 2) the application of a statute which should not have been invoked;
- 3) incorrect interpretation of the statute in contradiction to its precise meaning.

Article 347. Disparity between the penalty assigned by the court, the seriousness of the crime, and the character of the convicted person.

Punishment which, although it does not go beyond the limits prescribed by the corresponding criminal statute, is clearly unjust in its extent, either as a result of its lightness or its severity, is considered not to correspond to the seriousness of the crime and the character of the convicted person.

Article 348. The consequences of setting aside the sentence and remanding the case for retrial.

When setting aside a sentence and remanding the case for a new trial, the court indicates in its decision whether proceedings on the case should begin with another police inquiry, preliminary investigation, arraignment, or retrial.

If the sentence has been set aside in view of the necessity for preferring more serious charges, or a charge differing substantially, in regard to factual circumstances, from that originally preferred, the file is returned through the court which formulated the sentence to the prosecutor for additional investigation.

If the sentence has been set aside in view of violations which occurred while the case was being tried in court, the case is remanded for retrial to the court which formulated the sentence, but with a differently constituted bench, or to another court.

Article 349. Setting aside a sentence of inculcation with termination of the proceedings.

When reviewing a case by way of cassation, the court shall set aside a sentence of inculcation and terminate the proceedings under the following circumstances:

- 1) in the presence of the grounds enumerated in articles 5-9 of the present Code;
- 2) if the charge preferred against the defendant was not substantiated by the evidence examined by the court of first instance, and if there are no grounds for additional investigation or retrial.

Article 350. Changing the sentence.

If in the course of reviewing a case by way of cassation it is established that the court of first instance incorrectly applied a criminal statute or assigned a penalty which does not correspond to the seriousness of the crime or the character of the convicted person, the appellate court may, without remanding the case for a new trial, make the necessary changes in the sentence in conformity with the requirements of Article 340 of the present Code, always provided that the penalty specified in the new sentence is not greater than the penalty originally assigned, and that a statute governing a more serious crime has not been applied.

The appellate court shall not have the right to make changes in the sentence based on circumstances not established by the court of first instance, or on evidence rejected by that court.

Article 351. The content of the cassational decision.

The following shall be stated in the cassational decision:

- 1) the time and place of issue of the decision;
- 2) the designation and constitution of the court issuing the decision, the prosecutor, and other persons participating in the review of the case in the appellate court;

- 3) the person who filed the cassational appeal or protest;
- 4) the gist of the sentence, appeal or protest, prosecutor's final statement, and the explanations of the persons participating in the case;
- 5) the decision of the court of second instance on the appeal or protest.

When an appeal or protest is dismissed, the decision must show the grounds on which the arguments of the appeal or protest were considered to be incorrect or immaterial.

When the sentence is set aside or changed, the decision must show those articles of the law whose requirements were violated and in what the violation consisted, or for what reason the sentence was ill-founded.

When a case is remanded for additional investigation or retrial, these circumstances which are to be elucidated must be specified.

Article 352. The binding nature of the instructions issued by the appellate court.

The instructions issued by the court which has reviewed a case by way of cassation are binding with respect to additional investigation and the retrial of the case.

The court which has reviewed the case by way of cassation shall not have the right to establish, or to consider as established, facts which were not established in the sentence, or which were disproved therein, nor shall it have the right to decide in advance questions of the substantiation or non-substantiation of the charge, of the validity or non-validity of any evidence, or of the superiority of one kind of evidence over another, of the application by the court of first instance of any criminal statute, or of the measure of punishment.

Article 353. The trial of the case by the court of first instance following the setting aside of the original sentence.

Following the setting aside of a sentence, the case shall be tried in accordance with general procedure.

Increasing the penalty or applying a statute governing a more serious crime is permissible on retrial by the court of first instance only provided that the original sentence was set aside because of an insufficiently severe penalty or owing to the necessity of applying a statute governing a more serious crime on the basis of a cassational protest by the prosecutor, or appeal by the injured

party, or provided the new investigation of the case following the violation of the sentence establishes circumstances tending to show that the accused committed a more serious crime.

Article 354. Transmitting a decision of the appellate court for execution.

The decision of the appellate court is final and may be protested only by way of judicial control.

The decision is forwarded no later than five days after issue, together with the file, for execution by the court which formulated the sentence. The cassational appeal or protest and the materials introduced by way of supplement shall be appended to the file.

If in accordance with the decision of the appellate court the convicted person is to be released from confinement, a copy of the decision is sent by the appellate court, within one day's time, directly to the administrative office at the place of confinement, for compliance.

Article 355. The special decision of the appellate court.

The court which has reviewed a case by way of cassation shall have the right to issue a special decision calling the attention of the appropriate authorities to the violations committed in the course of the police inquiry, the preliminary investigation, or the trial, and to issue other special decisions as specified in Article 321 of the present Code.

SECTION FIVE

EXECUTING THE SENTENCE

Chapter Twenty-Nine

Executing the Sentence

Article 356. The entry of the sentence into legal force, and putting it into execution.

The sentence enters into legal force upon the expiration of the period allowed for filing a cassational appeal or protest, provided it was not appealed or protested. If a cassational appeal or protest was filed against the sentence, and if the latter was not set aside, it

enters into legal force when the case has been reviewed by the higher court.

A sentence which is not subject to cassational appeal enters into force from the moment it is pronounced.

A sentence of inculcation is put into execution when it enters into legal force.

A sentence of exculpation, or a sentence exempting the defendant from punishment, is put into execution immediately after pronouncement of sentence. If the defendant has been detained under guard, the court releases him from detention in the courtroom.

Supervision over the legality of execution of sentences is exercised by the prosecutor.

Article 357. The entry into legal force of a judge's ruling and a court decision, and putting them into execution.

The decision of a court or the ruling of a judge enters into legal force and is put into execution upon expiration of the time limit for filing an appeal or protest or, if a special appeal or special protest has been filed, when the case has been reviewed by the higher court.

A court decision or judge's ruling which is not subject to appeal or protest enters into force and is put into execution immediately after issue.

The protest of a prosecutor against a court decision ordering pre-term release or conditional pre-term release, the substitution of lighter punishment, or exemption from serving a sentence owing to illness, stays the execution of the decision.

Article 358. The binding nature of a sentence, decision, or ruling of the court.

Pursuant to Article 54 of the Basic Principles of Judicial Procedure for the USSR and the Union Republics, a sentence, decision, or ruling of the court which has entered into legal force is binding upon all state and public institutions, enterprises, and organizations, officials, and citizens, and shall be executed throughout the territory of the USSR.

Article 359. The procedure for transmitting a sentence, decision, or ruling of the court for execution.

The transmission for execution of a sentence, decision, or ruling of the court is the responsibility of the court which formulated the sentence. A judge or the president of the court sends an order for execution of the sentence, together with a copy of the sentence, to that organ responsible for putting the sentence into execution. If the sentence has been changed when the case was reviewed by way of cassation or judicial control, a copy of the decision or ruling of the appellate court or control instance is appended to the copy of the sentence.

The organ putting the sentence into execution immediately informs the court which formulated the sentence of the fact that it has been put into execution. The administrative office at the place of confinement shall inform the court which passed sentence as to the place where the convicted person is to serve his sentence.

A court which, in those cases specified by Article 304 of the present Code, has entrusted to a social organization, workers' collective, or individual person the custody, reeducation, and reformation of a conditionally convicted person, is required to send such person or organization a copy of the sentence, and periodically to inform itself as to the behavior of the conditionally convicted person.

With a view to increasing the educational effect of the sentence, the court which passed the sentence shall, when it enters into legal force, if such is necessary, send a copy of the sentence to the place of employment, study, or residence of the convicted person.

Where necessary, a sentence whereby public censure was expressed shall, upon becoming final, be brought to the attention of the public through the press or by other means.

Article 360. Granting visiting privileges to the relatives of the convicted person, and notifying them when the sentence is put into execution.

Prior to transmitting the sentence for execution, a people's assessor or the presiding judge shall grant visiting privileges, at their request, to the relatives of a convicted person confined under guard.

Following the entry into legal force of a sentence whereby a convicted person detained under guard is sentenced to be confined or to banishment, the administrative office at the place of confinement is required to notify the family of the convicted person where he is to be sent to serve his sentence.

Article 361. Deferring the execution of a sentence.

The execution of a judgment sentencing a person to deprivation of freedom, banishment, exile, or corrective labor without deprivation of freedom may be deferred if any of the following grounds are present:

- 1) serious illness of the convicted person preventing the serving of the sentence — pending his recovery;
- 2) pregnancy of the convicted person — for a period of not more than one year after delivery;
- 3) when immediate serving of the sentence might entail particularly serious consequences for the convicted person or his family because of a fire or other natural disaster, serious illness, the death of the only able member of the family, or other exceptional circumstances — for a period to be fixed by the court but not to exceed three months.

The payment of a fine may be deferred or arranged in installments for a period not to exceed six months if immediate payment of the fine is impossible for the convicted person.

Article 362. Exemption from serving a sentence because of illness.

If a person sentenced to deprivation of freedom is afflicted, while serving his sentence, with a chronic mental illness or other serious illness obstructing the serving of the sentence, the court, at the request of the administrative office of the corrective labor institution and on the basis of the conclusion of a medical commission, shall have the right to issue a decision releasing the person from further serving of the sentence.

When a convicted person who has contracted a chronic mental illness is exempted from the further serving of a sentence, the court shall have the right to apply compulsory measures of a medical character, or to transfer the person to the custody of organs of public health.

In deciding the question of exempting from the further serving of a sentence, persons who have contracted a serious illness, except for mental patients, the court shall take into account the seriousness of the crime which was committed, the character of the convicted person, and other circumstances.

Article 363. Pre-term and conditional pre-term release from punishment, and the substitution of less severe punishment.

In those cases prescribed by Article 27 (third part) and Article 53 of the Criminal Code RSFSR, the conditional pre-term release of

a convicted person, and likewise the substitution of lighter punishment for that part of the sentence which remains to be served, is effected by the court at the joint request of the administrative office of the corrective labor institution and the supervisory commission of the executive committee of the rayon or city soviet of workers' deputies at the place where the sentence is being served, or the organ responsible for executing a sentence of exile and banishment.

Pursuant to articles 27 (third part) and 55 of the Criminal Code RSFSR, release from punishment and the substitution of lighter punishment with respect to persons having committed crimes while under the age of 18 years, is effected by the court at the joint request of the administrative office of the corrective labor institution and the supervisory commission of the executive committee of the rayon or city soviet of workers' deputies or the commission on minors at the place where the sentence is being served.

Release from punishment in the form of deprivation of the right to hold certain positions or to engage in certain activity, is effected by the court at the petition of a social organization, workers' collective, or the convicted person.

If the court refuses to grant pre-term or conditional pre-term release from punishment, or the substitution of lighter punishment, reconsideration of requests to this effect shall not take place until after six months from the time the decision refusing the request was issued.

Article 364. Substituting the serving of a sentence in a colony for imprisonment, and substituting imprisonment for the serving of a sentence in a colony.

In the cases specified in Article 24 of the Criminal Code RSFSR, the substitution of serving a sentence in a corrective labor colony for imprisonment, and the substitution of imprisonment for the serving of a sentence in a colony is effected by the court at the request of the administrative office of the corrective labor institution or the supervisory commission of the executive committee of the rayon or town soviet of workers' deputies.

In the event that the court refuses to substitute confinement in a corrective labor colony for imprisonment, reconsideration of requests to this effect shall not take place until after six months from the time the decision refusing the request was issued.

Article 365. The replacement of corrective labor and fines by other measures of punishment.

The replacement of corrective labor by fines, public censure, or imposition of the obligation to make restitution for the damage done, with respect to persons adjudged unable to work, in accordance with Article 27 of the Criminal Code RSFSR, and the replacement of corrective labor at the place of employment by the performance of corrective labor at the direction of organs in charge of corrective labor, and in like manner the replacement of corrective labor by deprivation of freedom, in accordance with Article 28 of the Criminal Code RSFSR, is effected by the court at the request of the organ in charge of corrective labor.

The replacement of a fine by corrective labor is effected by the court in accordance with Article 30 of the Criminal Code RSFSR.

Article 366. Deducting the time spent in a medical institution from the period of the sentence.

If a person serving a sentence in the form of deprivation of freedom has been placed in a medical institution, the time the convicted person has spent therein shall be deducted from the period of the sentence.

Article 367. The execution of a sentence in the presence of other unexecuted sentences.

If, with respect to the convicted person, there are several unexecuted sentences of which the court formulating the most recent sentence had not been informed, this court, or a court of the same kind at the place of execution of the sentence, is required to issue a decision for the application to the convicted person of punishment under all of the above-mentioned sentences, pursuant to articles 40 and 41 of the Criminal Code RSFSR.

Article 368. Courts deciding questions associated with putting the sentence into execution.

Questions of deferring the execution of a sentence or not putting a sentence into execution, in accordance with Article 49 of the Criminal Code RSFSR, of replacing fines or corrective labor without confinement with other measures of punishment in those cases specified in Article 365 of the present Code, of including the time spent at corrective labor in the length of labor service in accordance with Article 27 of the Criminal Code RSFSR, of replacing the obligation to make restitution for damages by corrective labor, a fine, removal from position, or public censure in accordance with Article 32 of the Criminal Code RSFSR, of reducing the probationary period in connection with a conditional conviction in accordance with

Article 44 of the Criminal Code RSFSR, of the criminal prosecution of the guilty party in the event of a refusal of surety on the part of a social organization or workers' collective in accordance with Article 52 of the Criminal Code RSFSR, of changing or discontinuing the application of compulsory measures of a medical character to a mentally ill person in accordance with Article 60 of the Criminal Code RSFSR, of extending or discontinuing compulsory treatment with respect to alcoholics or drug addicts in accordance with Article 62 of the Criminal Code RSFSR, and in like manner any question of doubtfulness or lack of clarity arising when the sentence is put into execution, shall be decided by the court formulating the sentence.

If the sentence is put into execution outside the jurisdiction of the court which formulated the sentence, these questions shall be decided by a court of the same kind or, in the absence of a court of the same kind in the region of execution of the sentence, by a higher court. In this case a copy of the decision is sent to the court which formulated the sentence.

Questions of release from the serving of a sentence for reasons of illness, of conditional pre-term or pre-term release from punishment, of replacing the unserved portion of the sentence with lighter punishment, of substituting confinement in a corrective labor colony for imprisonment, or imprisonment for confinement in a corrective labor colony, are decided by the rayon (municipal) people's court at the place where the sentence is being served, irrespective of what court passed the sentence.

Article 369. The procedure for deciding questions associated with the execution of sentences.

Questions associated with the execution of a sentence shall be decided by the court in a sitting at which the prosecutor participates.

As a rule, the convicted person is summoned to the sitting. If the question relates to the execution of the sentence insofar as it concerns a civil suit, the civil plaintiff is also summoned. The failure of these persons to appear does not serve to prevent consideration of the case.

When the court is considering the question of releasing the convicted person for reasons of illness, or placing him in a hospital, the presence of a representative of the medical commission which issued the conclusion is mandatory.

When the court is considering the question of conditional pre-term or pre-term release from punishment, of replacing the

unserved part of the sentence with lighter punishment, and in like manner of replacing imprisonment with confinement in a corrective labor colony, or confinement in a corrective labor colony with imprisonment, a representative of the organ responsible for executing the sentence shall be called.

In those instances when the case is being considered by the court at the request of the supervisory commission under the executive committee of a rayon or town soviet of workers' deputies, or a commission on minors, the court informs these commissions of the time and place the petition will be heard.

The consideration of the case begins with a report by the presiding judge, after which the court hears the persons who have appeared in court and the conclusion of the prosecutor. The court then retires to the consultation room to make its decision.

Article 370. The consideration, by courts, of petitions for pardon.

The question of issuing a pardon in accordance with Article 57 of the Criminal Code RSFSR is decided by the rayon (municipal) people's court at the place of residence of the person serving the sentence, at the request of that person or of social organizations.

The prosecutor shall be notified of the petition received. The failure of the prosecutor to appear at the sitting of the court shall not serve to prevent consideration of the petition.

The presence in court of the person with respect to whom the petition for pardon is being considered, is mandatory. If the petition for pardon has been instigated by a social organization, the presence of a representative of such organization is also mandatory.

The consideration of a petition for pardon begins with a report by the presiding judge, after which the court hears the persons summoned, and the conclusion of the prosecutor.

If the court refuses to grant the petition for pardon, a new petition shall not be filed under after one year from the day the decision refusing pardon was issued.

SECTION SIX

REVIEWING SENTENCES, DECISIONS, AND RULINGS WHICH HAVE
ENTERED INTO LEGAL FORCE

Chapter thirty

The Proceedings at the Control Level

Article 371. The review, by way of judicial control, of a court sentence, decision, or ruling which has entered into legal force.

The review, by way of judicial control, of a court decision, sentence, or ruling which has entered into legal force, is permitted only upon protest by a prosecutor, president of a court, or their deputies as enumerated in the present article.

The following shall have the right to file protests:

- 1) the General Prosecutor USSR -- against sentences, decisions, and rulings of any court in the USSR;
- 2) the President of the Supreme Court USSR -- against rulings of the Presidium, and sentences and decision of the Judicial College for Criminal Cases, of the Supreme Court RSFSR when acting as a court of first instance;
- 3) the Deputy General Prosecutor USSR -- against sentences, decisions, and rulings of any court in the RSFSR, except for rulings of the Presidium of the Supreme Court RSFSR;
- 4) the Deputy President of the Supreme Court USSR -- against sentences and decisions of the Judicial College for Criminal Cases of the Supreme Court RSFSR acting as a court of first instance;
- 5) the Prosecutor RSFSR, the President of the Supreme Court RSFSR, and their deputies -- against sentences, decisions, and rulings of any court in the RSFSR, except for rulings of the Presidium of the Supreme Court RSFSR;
- 6) the President of the Supreme Court of an ASSR, of a kray, oblast, or municipal court, the court of an autonomous oblast, and the court of a national okrug, the prosecutor of an autonomous republic, kray, oblast, autonomous oblast, or national okrug -- against sentences and decisions of a rayon (municipal) people's court and the decisions of a judicial college for criminal cases of the Supreme Court of an ASSR, of a kray, oblast, or municipal court, of the court of an autonomous oblast, or the court of a national okrug reviewing a case by way of cassation.

Protests against the sentences of military tribunals are filed in accordance with the procedure prescribed by articles 20 and 21 of the Decree on Military Tribunals.

The person filing the protest shall have the right to withdraw it. A protest filed by a prosecutor may be withdrawn by a higher prosecutor.

A protest may be withdrawn only prior to the commencement of the court sitting at which the protest is to be considered.

Article 372. Staying the execution of a sentence, decision, or ruling of a court.

In accordance with Article 48 of the Basic Principles for Criminal Court Procedure of the USSR and the Union Republics, the General Prosecutor USSR, the President of the Supreme Court USSR, and their deputies, the Chief Military Prosecutor, and the President of the Military Collegium of the Supreme Court USSR shall have the right to stay the execution of a protested court sentence, decision, or ruling pending adjudication of the case by way of judicial control.

The Prosecutor RSFSR, the President of the Supreme Court RSFSR, and their deputies shall have the right to stay execution of a sentence, decision, or ruling of any court of the RSFSR, except for rulings of the Presidium of the Supreme Court RSFSR, pending adjudication of the case by way of judicial control.

Article 373. Filing a protest, by way of judicial control, against the lightness of a sentence, termination of proceedings, or an acquittal.

The review, by way of judicial control, of an inculpatory court sentence, decision, or ruling by reason of the lightness of the sentence or the necessity for applying to the convicted person a statute governing a more serious crime, or the review of an exculpatory court sentence or decision, or of a court ruling terminating the proceedings, is permitted only within one year following its entry into legal force.

Article 374. The courts which review cases on protest by way of judicial control.

The Presidium of the Supreme Court of an ASSR, of a kray, oblast, or municipal court, of the court of an autonomous oblast, or the court of a national okrug, reviews cases on protests against the cassational decisions of the courts and against sentences of rayon (municipal) people's courts which have entered into legal force.

The Judicial College for Criminal Cases of the Supreme Court RSFSR reviews cases on protest against the rulings of the presidia of supreme courts of ASSR's, kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs, and against sentences of supreme courts of ASSR's, kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of

national okrugs, provided they have not been the subject of cassational review by the Supreme Court RSFSR.

The Judicial College for Criminal Cases of the Supreme Court RSFSR reviews cases on protest against rulings of the presidia of supreme courts of ASSR's, kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs, and against sentences of supreme courts of ASSR's, kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs, provided they have not been the subject of cassational review by the Supreme Court RSFSR.

The Presidium of the Supreme Court RSFSR reviews cases on protest against the sentences and decisions of the Judicial College for Criminal Cases of the Supreme Court RSFSR.

A member of the presidium of a court who has taken part in the hearing of a case at the first or second instance, or by way of judicial control as a member of the Judicial College for Criminal Cases of the Supreme Court RSFSR, may not participate in the review of the case in question as a member of the presidium of a court.

If a majority of the members of the presidium of the Supreme Court of an ASSR, of a kray, oblast, or municipal court, of the court of an autonomous oblast, or the court of a national okrug has participated in the hearing of the case in question in a court of first instance or at the appellate level, the person filing the protest shall submit the case to the President of the Supreme Court RSFSR or the Prosecutor RSFSR, which is appropriate, for consideration of the question of filing the protest, by way of judicial control, with the Supreme Court RSFSR. When such a case is to be considered by the presidium of the Supreme Court of an ASSR, of a kray, oblast, or municipal court, of the court of an autonomous oblast, or of the court of a national okrug on protest from the General Prosecutor USSR, the Prosecutor RSFSR, or their deputies, it is transmitted to the Judicial College for Criminal Cases of the Supreme Court RSFSR for review by way of judicial control.

Article 375. Demanding and obtaining the file on a criminal case.

The persons enumerated in Article 371 of the present Code shall have the right, within the limits of their competence, to demand and obtain the file on any criminal case for purposes of deciding the question as to filing a protest against a court sentence, decision, or ruling which has become final.

The right of demanding and obtaining a file from rayon

(municipal) people's courts also belongs to the prosecutors of rayons (cities), who where necessary submit to the higher prosecutor a request for filing a protest by way of judicial control.

Article 376. Making a decision on a case which has been demanded and obtained.

If he deems that the sentence, decision, or ruling of the court on the case which has been demanded and obtained is illegal or not well-founded, the person specified in Article 371 of the present Code files a protest and forwards the file, together with the protest, to the appropriate control court.

If the person who has demanded and obtained the file discovers no grounds in the case for filing a protest, he so informs the person, institution, or organization at whose request the file was demanded for verification, giving the reasons for the refusal to file. The file is then returned to the court from which it was demanded and obtained.

Article 337. The procedure for reviewing a case on protest.

When a protest has been filed against a sentence, decision, or ruling which has become final, the case shall be reviewed by the control court sitting no later than 15 days from the time the file, with the protest, was received or, in the case of the Supreme Court RSFSR, no later than one month from the time of receipt.

The following participate in the review of a case by way of judicial control:

- 1) in the presidium of the Supreme Court of an ASSR, of a kray, oblast, or municipal court, of the court of an autonomous oblast, or the court of a national okrug -- the prosecutor of the autonomous republic, kray, oblast, city, autonomous oblast, or national okrug, as may be appropriate;
- 2) in the Judicial College for Criminal Cases of the Supreme Court RSFSR -- a prosecutor so empowered by the Office of the Prosecutor RSFSR;
- 3) in the Presidium of the Supreme Court RSFSR -- by the Prosecutor RSFSR or his deputy.

Where necessary, the court reviewing the case by way of judicial control shall have the right to summon the convicted person or acquitted person, or their counsel, to the sitting of the court.

A report on the case is read by the president of the court or, if he so authorizes, by a member of the presidium or member of the

court who has not previously participated in a hearing of the case. The person making the report sets forth the circumstances of the case, the content of the sentence, decision, or ruling, and the content of the protest. The person making the report may be questioned. If the convicted person or acquitted person or his counsel is participating in the sitting of the court, he shall have the right to give oral explanations after the reading of the report by the judge.

The prosecutor is then given an opportunity to sustain the protest he has filed or to give his conclusion on the protest filed by the president of the court or his deputy, after which the judges make a ruling (or, in the case of the Judicial College for Criminal Cases of the Supreme Court RSFSR, a decision) adopted by a majority vote. In the event of a tie vote the protest is considered to have been rejected since it failed to muster a majority vote.

Article 378. The decisions and rulings of the court considering the protest.

As a result of reviewing a case by way of control, the court may:

- 1) dismiss the protest;
- 2) quash the sentence and all subsequent court decisions and rulings, and terminate the proceedings, or remand the case for a new investigation or retrial;
- 3) quash the cassational decision and the subsequent court decisions and rulings, if made, and remand the case for another cassational review;
- 4) reverse the decisions and rulings handed down by way of judicial control and leave the sentence unchanged, or change the sentence of the court and the cassational decision;
- 5) make changes in the sentence, decision, or ruling of the court.

Article 379. The grounds for reversing or changing a court sentence, decision, or ruling which has become final.

The circumstances enumerated in Article 342 of the present Code constitute grounds for reversing or changing a sentence when reviewing a case by way of judicial control.

The decisions of a court of first instance, the rulings of a judge, the decisions of an appellate court, or the decisions and rulings of a control court shall be reversed or changed if the court considering the protest deems that in the decision or ruling in question the court of first instance handed down an opinion which was illegal or unfounded, or that a higher court upheld, reversed, or

changes a prior decision, ruling, or sentence in the case without adequate reason, or if in the course of review by the higher court there occurred infringements of the law which affected, or might have affected, the correctness of the decision or ruling handed down.

Article 360. The limits of the rights of the control court.

In reviewing a case by way of judicial control the court is not limited to the arguments of the protest but is required to verify all proceedings on the case in their entirety. If several persons have been convicted in the proceedings, but the protest has been filed with respect to only one or some of the convicted persons, the court is required to verify the case with respect to all of the convicted persons.

In reviewing a case by way of judicial control the court may mitigate the penalty assigned to the convicted person or apply a statute governing a less serious crime, but it shall not have the right to increase the penalty or apply a statute governing a more serious crime.

If it finds that the acquittal of a defendant, or the termination of proceedings, in a court of first instance or in an appellate court, was incorrect, or that the penalty assigned to the convicted person does not correspond in severity to the act committed, the control court shall have the right, in conformity with the conditions specified in Article 373 of the present Code, to set aside the sentence or decision and remand the case for retrial in the court of first instance or the appellate court, whichever is appropriate. In this case, when remanding a case to a court of first instance, the control court shall indicate the stage at which the case is being remanded for retrial.

If in the course of review by way of judicial control, the proceedings were terminated without adequate reason or the penalty for the convicted person was mitigated illegally, the higher control court shall have the right to set aside the decision or ruling of the lower control court and leave unchanged the sentence of the court of first instance or the decision of the appellate court.

If several defendants have been convicted or acquitted in one case, the court shall not have the right to set aside a sentence, decision, or ruling with respect to those acquitted or convicted persons in regard to whom no protest has been filed, if the vitiation of the sentence, decision, or ruling aggravates their position.

The instructions of the court reviewing a case by way of judicial control are binding in additional investigation and retrial of the case by a court.

The court reviewing a case by way of judicial control shall not have the right to establish, or to consider as established, circumstances which were not established in the sentence, or which were disproved therein, nor shall it have the right to predecide questions of the substantiation or non-substantiation of the charge, the reliability or non-reliability of any evidence, or the superiority of one kind of evidence over another, of the application of a particular criminal statute by the court of first instance, or of the measure of punishment.

Similarly, when reviewing a case by way of judicial control, and **setting aside** an appellate decision, the court shall not have the right to predecide the conclusions which might be drawn by the appellate court in hearing the case for a second time.

Article 381. The content of the decision or ruling.

The ruling issued when a case is reviewed by the presidium of a court, or the decision issued by the Judicial College for Criminal Cases of the Supreme Court RSFSR, by way of judicial control, must conform to the requirements of Article 351 of the present Code.

A decision is signed by the entire bench, whereas a ruling is signed by the person presiding at the session of the presidium.

The decision or ruling of the court is appended to the file together with the protest.

Article 382. Trying a case after vitiation of the original sentence or the decision of the appellate court.

After vitiation of the original sentence or the decision of the appellate court, the case shall be tried in accordance with the general procedure.

Increasing a penalty, or the application of a statute governing a more serious crime, when a case is being tried by a court of first instance or an appellate, whichever is appropriate, is permissible only provided that the original sentence or the decision was set aside by way of judicial control for undue lightness of punishment or owing to the necessity for applying a statute governing a more serious crime, or if the new investigation of the case following the vitiation of the sentence establishes evidence

indicating that the accused committed a more serious crime. A sentence formulated by a court of first instance when retrying a case may be appealed or protested in accordance with the general procedure.

Article 383. Filing additional protests.

A second sentence, decision, or ruling handed down as a result of the vitiation of previous judgments by way of cassation or judicial control, may be protested on general principles irrespective of the reasons for setting aside the first sentence, decision, or ruling of the court.

Chapter Thirty-One

Reopening Cases on the Basis of Newly Discovered Evidence

Article 384. Grounds for reopening cases on the basis of newly discovered evidence.

A court sentence, decision, or ruling which has entered into legal force may be set aside on the basis of newly discovered evidence.

The grounds for reopening a criminal case on the basis of newly discovered evidence are as follows:

1) deliberately false testimony of a witness or conclusion of an expert, as well as fraudulent material evidence, records of investigative and judicial actions, and other documents, or a deliberately false translation, resulting in the formulation of an ill-founded or illegal sentence, as established by a court sentence which has entered into legal force;

2) criminal abuses on the part of judges committed in the course of hearing the case in question, as established by a court sentence which has entered into legal force;

3) criminal abuses on the part of persons conducting investigations in connection with the case, resulting in the formulation of an ill-founded or illegal sentence or decision of the court regarding the termination of proceedings, as established by a court sentence which has entered into legal force;

4) other circumstances not known to the court at the time of formulating the sentence or decision which, by themselves or together with circumstances established previously, prove the innocence of the convicted person, or the fact that he committed a less serious or more serious crime than that of which he was

convicted, or which prove the guilt of an acquitted person or a person with respect to whom proceedings had been terminated.

When it is impossible to pass sentence owing to expiration of the period of limitation, the promulgation of an act of amnesty, or in view of the pardoning of particular individuals, or as the result of the death of the accused, the newly discovered evidence indicated in items 1-3 of the present article is established by an investigation conducted in accordance with the procedure provided by Article 387 of the present Code.

Article 385. The time limits for reopening a case on the basis of newly discovered evidence.

The review of an exculpatory court sentence, decision, or ruling terminating the proceedings, or the review of an inculpatory court sentence, decision, or ruling for reasons of the lightness of the sentence or the necessity of applying to the convicted person a statute governing a more serious crime, is permitted only during the period of limitation for initiating criminal prosecution established by Article 48 of the Criminal Code RSFSR, and not later than one year from the time the new evidence was discovered.

There is no time limit for reviewing an inculpatory sentence on the basis of newly discovered evidence.

The death of the convicted person does not serve to obstruct the reopening of a case on the basis of newly discovered evidence with a view to rehabilitating the convicted person.

Article 386. Initiating proceedings on the basis of newly discovered evidence.

The statements of citizens and the communications of institutions, enterprises, organizations, and officials concerning newly discovered evidence are transmitted to the prosecutor.

If any of those grounds enumerated in Article 384 of the present Code are found to be present, the prosecutor, within the limits of his competence, makes a ruling to initiate proceedings on the basis of newly discovered evidence, and conducts an investigation of the circumstances in question, or else instructs an investigator to do so. Interrogations, inspections, expert examination, seizure, and other requisite investigative actions may be carried out, the rules of the present Code being duly observed, when investigating newly discovered evidence.

If the prosecutor does not find grounds for initiating proceedings on the basis of newly discovered evidence, he makes a reasoned ruling of rejection. The prosecutor's ruling shall be communicated to the interested persons, institutions, enterprises, or organizations, which shall have the right of appeal to the higher prosecutor.

Article 387. The actions of the prosecutor upon completing the investigation of newly discovered evidence.

If, upon completion of the newly discovered evidence there are grounds for reopening the case, the prosecutor transmits the file, together with the materials from the investigation and his own conclusion, via the appropriate higher prosecutor to the court, being guided by the rules of Article 388 of the present Code.

If grounds for reopening the case are lacking, the prosecutor terminates the proceedings by means of a reasoned ruling. This ruling shall be communicated to the interested persons, institutions, enterprises, or organizations, which shall have the right to appeal it to the higher prosecutor.

Article 388. The settlement, by a court, of the question of reopening a case on the basis of newly discovered evidence.

Cases are reopened on the basis of newly discovered evidence as follows:

- 1) with respect to sentences and decisions of rayon (municipal) people's courts -- by the presidium of the corresponding higher court;
- 2) with respect to sentences, decisions, and rulings of the supreme courts of ASSR's, kray, oblast, and municipal courts, the courts of autonomous oblasts, and the courts of national okrugs -- by the Judicial College for Criminal Cases of the Supreme Court RSFSR;
- 3) with respect to sentences and decisions handed down in first instance, and rulings of the Supreme Court RSFSR -- by the Presidium of the Supreme Court RSFSR.

The fact that a case has previously been heard by way of appeal or judicial control does not obstruct its hearing by the same court by way of reopening the case on the basis of newly discovered evidence.

The reopening of a case on the basis of newly discovered evidence is effected at a sitting of the court in accordance with the rules prescribed by Article 377 of the present Code.

Article 389. The decisions and rulings of the court considering the conclusion of the prosecutor.

The presidium of a court hearing a case on the basis of newly discovered evidence makes a ruling, or the Judicial College for Criminal Cases of the Supreme Court RSFSR makes a decision:

- 1) setting aside the sentence, decision, or ruling of the court, and transmitting the case for a new investigation or a new trial
- 2) setting aside the sentence, decision, or ruling of the court and terminating proceedings;
- 3) dismissing the conclusion of the prosecutor.

Article 390. The proceedings following the reopening of a case on the basis of newly discovered evidence.

The preliminary investigation and the trial following the reopening of a case owing to quashing of the sentence on the basis of newly discovered evidence, and in like manner the filing of an appeal against the sentence handed down, are effected on general principles.

In trying a case in which the sentence has been vitiated owing to newly discovered evidence, a court of first instance is not limited to the amounts of punishment assigned in the sentence which has been set aside.

SECTION SEVEN

PROCEEDINGS IN CASES INVOLVING MINORS

Chapter Thirty-Two

Proceedings in Cases Involving Minors

Article 391. The procedure for trying cases involving minors.

Judicial proceedings in cases involving minors are determined by the general rules of the present Code and, in addition, by the articles which follow.

The provisions of the present chapter apply to cases involving persons who were under the age of 18 years at the time of commission of the crime.

Article 392. Circumstances which must be established in cases involving minors.

In the conduct of the preliminary investigation and the trial of cases involving minors, special attention must be devoted to ascertaining the following circumstances:

- 1) the age of the minor (day, month, and year of birth);
- 2) his living conditions and education;
- 3) the causes and conditions facilitating the commission of the crime by the minor;
- 4) whether there were any adult instigators or other accomplices.

If there is information indicating mental backwardness on the part of the minor which is not associated with a mental illness, it must also be ascertained whether he was capable of fully realizing the significance of his acts. In order to establish these circumstances the minor's parents, his teacher, educators, and other persons who might provide the necessary information shall be interrogated; the necessary documents shall be demanded and obtained; and other investigative and judicial actions shall be carried out.

Article 393. The arrest and detention under guard of minors.

Arrest and detention under guard as a measure of restraint shall be applied to a minor only in exceptional cases when such is necessitated by the seriousness of the crime committed, when those grounds enumerated in articles 91, 96, and 122 of the present Code are found to be present.

Minors subjected to arrest or prior confinement shall be confined separately from adults and minors who have been convicted.

Article 394. Placing a minor under surveillance.

In addition to the measures of restraint enumerated in Article 89 of the present Code, minors may be placed under the surveillance of parents, foster parents, and guardians. Minors who are being reared in child care institutions of the "closed" type may be placed under the surveillance of the administrative office of such institutions.

Placement under the surveillance of parents, foster parents, guardians, or the administrative office of a child care institution of the "closed" type consists in the fact that one of the persons mentioned supra undertakes, in writing, to assure the appearance of the minor before the investigator, and in court, and his proper

behavior.

When a written undertaking to maintain surveillance is obtained from parentes, guardians, foster parents, or heads of child care institutions of the "closed" type, such persons are warned as to the nature of the crime of which the minor is suspected or with which he has been charged, and as to their responsibility in the event of non-fulfillment of the obligation they have undertaken.

In the event of the non-fulfillment of their obligations, the parents, foster parents, or guardians to whom the minor was entrusted for surveillance shall be subjected to the measures prescribed in Article 94 (third part) of the present Code.

Article 395. The procedure for summoning the accused.

As a rule, a minor is summoned to appear before the investigator, or in court, through his parents or other legal representatives. A different procedure is permitted only when necessitated by the circumstances of the case.

A minor being held under guard is summoned through the administrative office at the place of detention.

Article 396. Making provision for separate proceedings in cases involving minors.

If a minor has participated in the commission of a crime together with adults, provision shall be made, insofar as possible, for separate proceedings on the case involving him during the stage of the preliminary investigation.

If making provision for separate proceedings with respect to the minor may create substantial obstacles to a thorough, complete, and objective investigation of the case, the rules of the present chapter should be applied to the minor who is being prosecuted as an accused person together with adults in the same case.

Article 397. The participation of a teacher in the interrogation of an accused person who is a minor.

At the discretion of the investigator or prosecutor, or at the request of defense counsel, a teacher may participate in the questioning of an accused person who has not reached the age of 16 years. A teacher may also participate in the questioning of a minor more than 16 years old if he is acknowledged to be mentally retarded.

The teacher participating in the interrogation shall have the right, with the permission of the investigator, to question the accused. Upon completion of the interrogation the teacher who has participated therein shall have the right to familiarize himself with the record of the interrogation, and to make written comments on the correctness and completeness of the minutes. Prior to beginning the questioning of a minor, the investigator is required to inform the teacher as to his rights, and a notation to this effect is entered in the record.

Article 398. Familiarizing the legal representative of a minor accused person with the materials of the case.

When a minor is informed of the completion of the preliminary investigation and is furnished with the materials of the case so that he can familiarize himself with them, the legal representative of the accused may be allowed to participate if he so requests.

The investigator shall have the right to refuse to allow the legal representative of the minor to participate in the familiarization with the materials of the case on the part of the accused if he considers that this might be prejudicial to the interests of the minor.

Article 399. Participation in the courtroom proceedings on the part of legal representatives of a defendant who is a minor.

The parents or other legal representatives of a defendant who is a minor shall be summoned for the sitting of the court. They shall have the right to participate in the investigation of evidence at the trial, to introduce evidence, to present petitions and challenges. These rights shall be explained to them at the beginning of the trial.

When it is necessary to question parents and other legal representatives of the defendant as witnesses, the court shall hear their testimony. The legal representatives of the defendant shall be present in the courtroom throughout the trial.

In exceptional cases, when participation in the trial on the part of the legal representative may be prejudicial to the interests of an accused person who is a minor, the court shall have the right, by means of a reasoned decision, either to bar the legal representative completely from participation in the trial, or to limit his participation to a certain part of the courtroom proceedings.

The failure of legal representatives of the defendant to appear in court does not serve to prevent the hearing of the case if the court does not deem their participation indispensable.

Article 400. Participation in the trial on the part of representatives of educational institutions and social organizations.

With a view to increasing the educational influence of the trial of a case involving a minor, notice of the time and place of the hearing shall be sent to the school or other educational institution attended by the minor, and to social organizations at his place of employment or study. Where necessary the court shall have the right to summon to court representatives of such organizations and representatives of social organizations at the place of employment of the parents, foster parent, or guardian of the defendant.

Article 401. The removal from the courtroom of a defendant who is a minor.

When the court has heard the opinion of the defense counsel and the legal representative of the defendant, and the conclusion of the prosecutor, it shall have the right, by means of a decision, to remove the minor from the courtroom during examination of evidence which might have a negative influence on the minor.

Article 402. The application by the court of compulsory measures of an educational character to a minor.

If as a result of the judicial examination of the case the court arrives at the conclusion that the reformation of a person who has committed a crime while under the age of 18 years, which crime does not represent a great social danger, is possible without the application of criminal punishment, it issues a decision to terminate criminal proceedings and apply to the minor one of the compulsory measures of an educational character enumerated in Article 10 of the Criminal Code RSFSR.

The requirements of Article 261 of the present Code are observed in the formulation of the decision.

The termination of criminal proceedings with respect to a minor may be effected by the court in executive session in accordance with Article 8 of the present Code.

SECTION EIGHT

THE PROCEDURE FOR APPLYING COMPULSORY MEASURES
OF A MEDICAL CHARACTER

Chapter Thirty-Three

The Procedure for Applying Compulsory Measures of
A Medical Character

Article 403. The grounds for applying compulsory measures of a medical character.

The compulsory measures of a medical character enumerated in Article 58 of the Criminal Code RSFSR shall be applied by the court to persons who have committed socially dangerous acts governed by a criminal statute, while in a state of irresponsibility, or who after committing a crime have contracted a mental illness depriving them of the possibility of realizing the significance of their actions or of controlling them, if such persons represent a danger to society by reason of the act they have committed or their state of illness.

Judicial procedure with respect to applying compulsory measures of a medical character is governed by the general rules of the present Code and by the articles which follow.

Article 404. The procedure for preliminary investigation.

A preliminary investigation is mandatory in cases involving the socially dangerous acts of irresponsible persons or crimes of persons who have become mentally ill following the commission of the crime.

In the course of the preliminary investigation, the following circumstances must be ascertained:

- 1) the time, place, method, and other circumstances of the commission of the socially dangerous act;
- 2) the commission of the socially dangerous act by the person in question;
- 3) whether the person who committed the socially dangerous act had had any mental illnesses in the past; the degree and character of the mental illness at the moment the socially dangerous act was committed, and as of the time the case was investigated;
- 4) the behavior of the person who committed the socially dangerous act both before and after its commission;
- 5) the character and extent of the damage caused by the

socially dangerous act.

The person shall be sent for forensic psychiatric examination only provided there is adequate evidence indicating that it was in fact the person in question who committed the socially dangerous act in connection with which the criminal proceedings were initiated and the investigation is being conducted.

If by reason of his mental state, the participation of the person who committed the socially dangerous act in investigative actions is not feasible, the investigator shall prepare a protocol to that effect.

Article 405. The participation of defense counsel.

The participation of defense counsel is mandatory in cases involving persons who have committed socially dangerous acts in a state of irresponsibility, or persons who have become mentally ill following the commission of a crime.

The defense attorney shall be permitted to enter the case from the moment it is established that the person who committed the socially dangerous act is mentally ill.

Article 406. Completion of the preliminary investigation.

Upon completion of the preliminary investigation the investigator makes a ruling:

- 1) terminating the proceedings -- in the cases specified in Article 208 of the present Code, or in those cases where because of the character of the socially dangerous act which was committed, and because of the mental state of the person who committed the act, such person does not represent a danger to society;

- 2) to transmit the case to court if he finds grounds for applying compulsory measures of a medical character to the person who committed the socially dangerous act.

The ruling transmitting the case to court must set forth all of the circumstances of the case established by the preliminary investigation, and the grounds for the application by the court of compulsory measures of a medical nature.

The ruling, together with the file, is sent to the prosecutor, who, if he agrees with the ruling, transmits the case to court. If he does not agree with the ruling he returns the file for additional investigation. In the absence of grounds for applying compulsory measures of a medical character, the prosecutor terminates the proceedings.

In terminating proceedings when because of the character of the socially dangerous act which was committed, and because of the mental state of the person who committed the act, such person does not represent a danger to society, the investigator or the prosecutor reports him to local organs of public health.

Article 407. Preparations for the sitting of the court.

A people's assessor or the presiding judge, having received the case from the prosecutor, sets a time for hearing it at a sitting of the court, notifies the prosecutor, defense counsel, and legal representatives of the person who committed the socially dangerous act, and summons injured parties, witnesses and, where necessary, experts.

The people's assessor or presiding judge shall have the right to issue an order summoning the person whose case is being heard, provided the character of his illness does not constitute an obstruction.

If the people's assessor or presiding judge finds grounds for terminating the proceedings for the application of compulsory measures of a medical character, or grounds for returning the case for additional investigation, he brings the case up for hearing by an executive session of the court.

Article 408. Trying the criminal case.

The judicial examination of a case transmitted to the court in accordance with Article 406 of the present Code is conducted at a sitting of the court in accordance with the rules of chapters 21-23 of the present Code, with the mandatory participation of the prosecutor and defense counsel.

The court, when convened, shall verify the evidence tending to prove or disprove the commission, by the person in question, of a socially dangerous act governed by criminal statute; shall hear the prosecutor's conclusion as to the mental state of the accused; and shall verify other evidence materially relevant to deciding the question of applying compulsory measures of a medical character.

Upon conclusion of the judicial investigation, the court hears the arguments of the prosecutor and the defense attorney.

Article 409. Settlement of the case by the court.

The court settles the case by a decision made in camera.

In handing down its decision the court must decide the following questions:

- 1) whether a socially dangerous act governed by criminal statute has occurred;
- 2) whether the person whose case is being heard committed the act;
- 3) whether the person in question committed the socially dangerous act in a state of irresponsibility;
- 4) whether the person in question, after committing the crime, contracted a mental illness depriving him of the possibility of realizing the significance of his actions or controlling them, and whether this illness is not a temporary disturbance of psychic behavior requiring merely the suspension of proceedings on the case;
- 5) whether a compulsory measure of a medical character should be applied and, if so, what measure.

Article 410. The decision of the court.

If the court considers it to have been proven that the person in question committed a socially dangerous act governed by criminal state while in a state of irresponsibility, or that after committing a crime the person contracted a mental illness depriving him of the possibility of realizing the significance of his actions or controlling them, it issues a decision in accordance with Article 11 of the Criminal Code RSFSR exempting the person from criminal responsibility or from punishment, whichever is appropriate, and applying to him a compulsory measure of a medical character, specifying the measure to be applied, or a decision terminating the proceedings and rejecting the application of such measures, in those cases where because of the character of the act committed by the person, and because of his state of illness, he does not represent a danger to society and is not in need of compulsory treatment. In such cases the court reports the patient to organs of public health.

If the court considers that the irresponsibility of the person whose case is being heard, has not been proven, or that the illness of the person who committed the crime does not exclude the application of measures of punishment to him, it issues a decision returning the case for additional investigation and subsequent disposition in accordance with general procedure.

If the court considers that the participation of the given person in the commission of the socially dangerous act was not proven, or if it establishes those circumstances enumerated in Article 5 of the present Code, it issues a decision terminating the proceedings on the grounds it has established, irrespective of the presence and character of the illness of the person in question, and

notifies the public health organs accordingly.

The questions enumerated in Article 317 of the present Code shall be decided in the decision of the court.

Article 411. Appealing and protesting the decision of the court.

Not later than seven days after issue, the decision of the court may be appealed by defense counsel, the injured party or his representative, or the near relatives of the person whose case was heard, or it may be protested by the prosecutor to a higher prosecutor.

Article 412. Cancelling or changing a compulsory measure of a medical character.

If as a result of the recovery of the person ruled to have been irresponsible, or of a change in his state of health, it ceases to be necessary to apply the compulsory measure of a medical character which was employed, the court, on the basis of a request submitted by the administrative office of the medical institution where the person in question is institutionalized, and based on the conclusion of a commission of physicians, considers the question of cancelling or changing the compulsory measure of a medical character, being guided by the procedure prescribed in Article 369 (first and sixth parts) of the present Code.

The same provisions apply to a person who has contracted a chronic mental illness after the commission of a crime, provided such person, as a result of the change in his state of health, no longer requires application of compulsory measures of a medical character, although remaining mentally ill.

Petitions for cancelling or changing compulsory measures of a medical character may be filed by near relatives of the person found irresponsible, and by other interested persons. In such cases the court requests information from the appropriate public health organs as to the health of the person with respect to whom the petition was filed.

The questions enumerated in the present article are decided by the court issuing the decision for the application of a compulsory measure of a medical character, or by the court at the place where such measure is applied, with the mandatory participation of the prosecutor.

Article 413. Reopening a case with respect to a person to whom a compulsory measure of a medical character has been applied.

If a person to whom a compulsory measure of a medical character has been applied as a result of his having become mentally ill following the commission of a crime, is found by a medical commission to have recovered, the court, on the basis of the conclusion of the medical institution, and in accordance with the rules of Article 369 of the present Code, issues a decision cancelling the compulsory measure of a medical character which was employed, and decides the question as to returning the case for police inquiry or preliminary investigation, initiating prosecution of the person in question as an accused person, and transmitting the case to court in accordance with the general procedure.

The time spent in the medical institution shall be counted in the period of confinement under guard.

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